

NORTH CAROLINA REGISTER

ISSUE CONTENTS



*Office of Administrative Hearings
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NORTH CAROLINA REGISTER

Publication Schedule

(March 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
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9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

JPT:CMK:EMP:emr
DJ 166-012-3
93-4831

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

February 24, 1994

DeWitt F. McCarley, Esq.
City Attorney
P. O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to three annexations [Ordinance Nos. 2720, 2737, and 2738 (1993)] and election district assignments thereof for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 27, 1993.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JPT:GS:TGL:emr
DJ 166-012-3
93-4843

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

February 25, 1994

Robert C. Cogswell, Jr., Esq.
City Attorney
P. O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the increase in compensation for the mayor and members of the city council of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 28, 1993.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

TITLE 15A
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

The proposed effective date for the rules published in Volume 8, Issue 23, March 1, 1994 for the Department of Environment, Health, and Natural Resources was published incorrectly. The notice with the correct proposed effective date is as follows:

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt rules cited as 15A NCAC 2D .0805, .0806, .1109; 2Q .0101 - .0111, .0201 - .0207, .0301 - .0311, .0401 - .0418, .0501 - .0524, .0601 - .0606; amend rules cited as 15A NCAC 2D .0101, .0501, .0503, .0524, .0525, .0530 - .0533, .0601, .0801 - .0804 and repeal rules cited as 15A NCAC 2H .0601 - .0607 and .0609.

The proposed effective date of this action is ~~July 14, 1994~~ July 1, 1994.

The public hearing will be conducted at 7:00 p.m. on March 21, 1994 at EHNRC, 512 North Salisbury Street, Archdale Bldg/Groundfloor Hearing Room, Raleigh, NC.

Reason for Proposed Action: To correct a hearing procedural deficiency by reconsidering recodification of current permit rules, adoption of permit rules to meet the requirements of Title IV and V of the federal Clean Air Act, adoption of new permit fee schedules, and revision of transportation facility (complex source) rules in light of a local fiscal note.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The Environmental Management Commission (EMC) seeks comments in light of the local fiscal note. The hearing records will be closed at the end of the public hearing. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-1489.

These Rules affect the expenditures or revenues of local funds. A fiscal not was submitted to the Fiscal Research Division on February 2, 1994, OSBM on February 4, 1994, N.C. League of Municipalities on February 2, 1994, and N.C. Association of County Commissioners on February 2, 1994.

Editor's Note: These Rules (with the exception of 15A NCAC 2H .0609) were filed as temporary rules effective March 8, 1994 for a period of 180 days or until the permanent rules become effective, whichever is sooner.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

The location of the public hearing for March 22, 1994 published in Volume 8, Issue 22, February 15, 1994 for the Department of Transportation has been changed as follows:

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 2D .0607.

The proposed effective date of this action is August 1, 1994.

The public hearing will be conducted at 10:00 a.m. to 4:00 p.m. on the following dates and locations:

March 8, 1994

*Transportation Building Auditorium
1 South Wilmington Street
Raleigh, N.C.*

March 15, 1994

*Board of Commissioner's Room
Cabarrus County Courthouse
65 Church Street
Concord, N.C.*

March 22, 1994

*Southern Pines Town Hall Council Chambers
140 Memorial Park Court 145 S.E. Broad Street
Southern Pines, N.C.*

Reason for Proposed Action: Allow permits for 16-foot wide mobile or modular homes to be transported on specified North Carolina highways.

Comment Procedures: Interested persons may preregister to speak at the public hearings by contacting Emily Lee, N.C. DOT, P.O. Box 25201, Raleigh, NC 27611, (919) 733-2520 no later than two days prior to the hearing. A 10-minute speaking time limit will be observed. Written comments will also be accepted and should be sent to Ms. Lee at the above address no later than April 1, 1994.

**TITLE 4 - DEPARTMENT
OF COMMERCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce, Division of Community Assistance intends to amend rules cited as 4 NCAC 19L .0104, .0401, .0403 - .0404, .0407, .0501 - .0502, .0901, .0906, .0912, .1011, .1202, .1302 - .1303 and repeal rules cited as 19L .1501 - .1505, .1601 - .1604.

The proposed effective date of this action is June 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Written requests for a Public Hearing must be received by March 30, 1994. Written requests should be sent to Bob Chandler, Director, Division of Community Assistance, P.O. Box 12600, Raleigh, NC 27605-2600.

Reason for Proposed Action: The proposed action is necessary to enable the Division of Community Assistance to facilitate the implementation of the Community Development Block Grant Program in aid of which the rules were adopted.

Comment Procedures: Oral or written comments will be accepted until April 14, 1994. Written comments should be sent to Bob Chandler, Director, Division of Community Assistance, P.O. Box 12600, Raleigh, NC 27605-2600. Oral comments should be directed to Donna Moffitt (919) 733-2850.

**CHAPTER 19 - DIVISION OF
COMMUNITY ASSISTANCE**

**SUBCHAPTER 19L - NORTH CAROLINA
COMMUNITY DEVELOPMENT BLOCK
GRANT PROGRAM**

SECTION .0100 - GENERAL PROVISIONS

.0104 WAIVERS

The Secretary may issue a written waiver of waive any requirements of this Subchapter not required by law whenever he determines that undue hardship to recipients or beneficiaries will result from applying the requirement and where

application of the requirement would adversely affect the purposes of the Act.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.480.

**SECTION .0400 - DISTRIBUTION OF
FUNDS**

.0401 GENERAL

(a) The Division shall designate specific dates for submission of grant applications under each category except for Housing Development and Urgent Needs. Housing Development and Urgent Needs applications may be submitted at any time, but other grant application submission dates will be announced by the Division.

(b) In cases where the Division makes a procedural error in the application selection process that, when corrected, would result in awarding a score sufficient to warrant a grant award, the Division may compensate that applicant at the earliest time sufficient funds become available or with a grant in the next funding cycle.

(c) Applicants can apply for funding under the grant categories of Community Revitalization, Housing Development, Entrepreneurial Empowerment and Interim Assistance, ~~Urgent Needs, and Community Investment for Economic Opportunity~~. Applicants shall not apply for Contingency funding. Contingency awards will be made to eligible applicants in Community Revitalization, ~~and Housing Development~~ categories.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

**.0403 SIZE AND USE OF GRANTS MADE
TO RECIPIENTS**

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization - eight hundred fifty six hundred thousand dollars (\$600 850,000); Scattered Site, a subset of Community Revitalization - three five hundred thousand dollars (\$3-500,000); Housing Development - two hundred fifty thousand dollars (\$250,000) or funds available; Urgent Needs - six hundred thousand dollars (\$600,000); ~~Interim Assistance~~ seven hundred fifty thousand dollars (\$750,000) for projects designated to be completed within 36 months from the award date, and four million dollars (\$4,000,000) for projects designated to be completed within 18 months from

the award date; Contingency - six hundred thousand dollars (\$600,000); and Entrepreneurial Empowerment up to one million (\$1,000,000). Community Investment for Economic Opportunity up to one hundred fifty thousand dollars (\$150,000). Applicants shall not have a project or combination of projects under active consideration for funding which exceeds one million two hundred fifty thousand dollars (\$1,00 250,000), except for Interim Assistance and Urgent Needs projects. Applicants in the Community Revitalization category shall choose to apply for either a concentrated site award or a scattered site award, but not both from the same HUD allocation.

(b) No local government may receive more than a total of one million two hundred fifty thousand dollars (\$1,00 250,000) in CDBG funds in the period that the state distributes its annual HUD allocation of CDBG funds; except that local governments may also receive up to six hundred thousand dollars (\$600,000) for a project that addresses Urgent Needs and up to four million dollars (\$4,000,000) in Interim Assistance funds and funds for one demonstration project in addition to other grants awarded during the same time period.

(c) Community Revitalization basic category applicants may spend no more than 15 percent of their total grant amount to finance local option activities. Local option activities are eligible activities which do not need to be directly related to proposed projects; however, job creation activities are not eligible local option activities. Local option activities will not be competitively rated by the Division, but may be limited to specific eligible activities housing, water/sewer, and streets; each local option project must show that:

- (1) At least fifty-one percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; except that CDBG funds may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

(d) The Division may review grant requests to determine the reasonableness and appropriateness of all proposed administrative and planning costs. Notwithstanding Rule .0910 of this Subchapter, grantees may not increase their approved planning

and administrative budgets without prior Division approval. In no case, may applicants budget and expend more than 18 percent of the sum of funds requested and program income for administrative and planning activities for each project.

(e) Applicants may spend CDBG funds in those areas in which the applicant has the legal authority to undertake project activities.

(f) Grants to specific recipients will be provided in amounts commensurate with the size of the applicant's program. In determining appropriate grant amounts for each applicant, the Division may consider an applicant's need, proposed activities, all proposed administrative and planning costs, and ability to carry out the proposed activities.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483; 42 U.S.C. 5301.

.0404 GRANT CATEGORY ALLOCATION

(a) Each program year, funds will be reserved for each grant category. Funds awarded to local governments will be reserved for each grant category in accordance with the Program Design Statement as approved annually by HUD, as follows: Up to five percent of the grant will be awarded for Housing Development grants. In addition, up to five percent will be set aside for Urgent Needs grants and Contingency awards and up to twenty percent will be set aside for Economic Development grants each year. From time to time, the Division may set aside between one and two percent for demonstration grants. The remaining funds will be distributed by the Division to Community Revitalization grant applications.

(b) Awards will be made for Interim Assistance from funds available in the state's allocation in accordance with Rule .1504 of this Subchapter.

(c) Up to one million dollars (\$1,000,000) of funds that are recaptured from previous CDBG grants by the state may be used to make additional grants in the Housing Development category.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0407 GENERAL APPLICATION REQUIREMENTS

(a) Local governments are required to submit applications in a manner prescribed by the Division in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for the Division to rate them against

the selection criteria. In addition, the following may be considered: information from any source which regards the eligibility of the applicant or application, the legality or feasibility of proposed activities, the applicant's compliance with application procedures specified in this Subchapter, or the accuracy of the information presented in the application; evaluation of proposed projects by on-site review; and category-specific information described in Sections .0500, .0800, .1200, and .1300, ~~.1500~~, and ~~.1600~~ of this Subchapter. All applicants are required to address their projects to one of the following grant categories: Community Revitalization, (either concentrated needs or scattered site), Housing Development, Interim Assistance, Urgent Needs, or Entrepreneurial Empowerment Community Investment for Economic Opportunity. Applicants may apply in more than one grant category, ~~apply for several projects in the same grant category, and have more than one project approved~~, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in sufficient detail, to be adequately rated.

(b) Applications must be received by the Division's administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.

(c) Applicants must provide citizens with adequate opportunity for meaningful involvement in the development of Community Development Block Grant applications. Specific citizen participation guidelines are described further in Rule .1002 of this Subchapter. If the Division is aware of an applicant's failure to meet these citizen participation requirements, the Division may not rate the application.

(d) The Division may submit all CDBG applications and environmental review records as required by the National Environmental Policy Act and the State Environmental Policy Act to the State Clearinghouse of the Department of Administration for review and comments. The Division may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.

(e) The applicant shall certify to the Division that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders. Copies of these federal and state requirements are available for public inspection from the Division.

(f) Applicants must comply with the Housing

and Community Development Act of 1974 as amended, all applicable federal and state laws, regulations, rules, Executive Orders and guidelines issued by the Division.

(g) Application requirements described in this Rule .0407 do not apply to demonstration grants and Urgent Needs grants, except for Paragraphs (a), (d), (f) and (g).

(h) For multi-family rental housing activities, the applicant must state in the application the standards it has adopted for determining affordable rents for such activities.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.483.

SECTION .0500 - COMMUNITY REVITALIZATION PROJECTS

.0501 DESCRIPTION

(a) The Community Revitalization category includes activities in which a majority of funds is directed towards improving, preserving or developing residential areas. All eligible CDBG activities may be undertaken for the purpose of community revitalization.

- (1) Applications for funding may involve single or multiple activities, addressing one or more needs in the area except for scattered site subcategory which addresses one need.
- (2) All community revitalization activities, except for scattered site activities, must be carried out within project areas of concentrated need.
- (3) Community Revitalization funds are distributed to eligible units of local government on a competitive basis. Community Revitalization projects will be evaluated against other Community Revitalization project proposals.

(b) The Community Revitalization category also includes a subcategory for scattered site housing activities which are directed towards one hundred per cent low and moderate income benefit or the prevention or elimination of slums or blight. Scattered site projects are limited to housing rehabilitation, acquisition, disposition, clearance, and relocation activities.

- (1) Scattered site activities may be carried out in any location throughout the applicant's jurisdiction and need not be carried out in an area of concentrated need.
- (2) No local funds are required or expected

- to be contributed to scattered site housing rehabilitation projects.
- (3) Scattered site funds are distributed to eligible units of local government on a competitive basis; and projects will be evaluated against other scattered site project proposals.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.0502 ELIGIBILITY REQUIREMENTS

- (a) Applications for Community Revitalization basic category funds must show that:
- (1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons, except that CDBG funds proposed for local option activities may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

Applications that do not meet these eligibility requirements will not be rated or funded. In designing projects which meet these requirements, applicants must appropriately ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

- (b) Applicants for scattered site subcategory funds must show that:

- (1) All rehabilitation activities benefit 100 percent low and moderate income persons; and
- (2) CDBG funds proposed for acquisition, clearance, and disposition of vacant units will address the national objective of preventing or eliminating slums or blight.

- (c) Applicants shall have the capacity to administer a CDBG program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and

accomplishments in previously funded CDBG programs.

Applicants that show a lack of capacity will not be rated or funded.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

SECTION .0900 - GRANT ADMINISTRATION

.0901 GRANT AGREEMENT

(a) Upon approval of the application by the Division, a written grant agreement will be executed between the recipient and the Division. These Rules, subsequent guidelines prepared by the Division, the approved application, and any subsequent amendments to the approved application shall become a part of the grant agreement.

(b) The grant agreement in its original form and all modifications thereto shall be kept on file in the office of the recipient in accordance with Rule .0911 of this Section.

(c) The Division may condition the grant agreement until the recipient demonstrates compliance with all applicable laws and regulations. In the case of Housing Development and Entrepreneurial Empowerment and Community Investment for Economic Opportunity projects the grant agreement may be conditioned until legally binding commitments have been obtained from all participating entities.

(d) Neither CDBG nor non-CDBG funds involved in a project may be obligated, nor may any conditioned project activities begin until the Division releases in writing any and all applicable conditions on the project. Recipients may incur certain costs prior to release of conditions with prior Division approval in accordance with Rule .0908 of this Section.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0906 FINANCIAL MANAGEMENT SYSTEMS

Recipient financial management systems shall provide for accurate, current and complete disclosure of the financial results of each grant program in accordance with reporting requirements set forth in G.S. 159, Subchapter III, the Local Government Budget and Fiscal Control Act. Recipients shall meet the following requirements:

- (1) All grant funds shall be expended in accordance with a budget ordinance or

- project ordinance adopted under G.S. 159-8 and G.S. 159-13.2 respectively;
- (2) A recipient may deposit or invest all or part of the cash balance of any grant fund; however, all interest earned shall be returned to the Department in accordance with Rule .0907(c) of this Section;
- (3) Investment deposits shall be secured as provided in G.S. 159-31(b);
- (4) The recipient shall designate as its official depositories one or more banks or trust companies in the State in accordance with G.S. 159-31(a);
- (5) All budgetary accounting for appropriations of grant funds shall be in accordance with the procedures for incurring obligations and disbursements as set forth in G.S. 159-28;
- (6) Each recipient shall establish an accounting system in accordance with G.S. 159-26;
- (7) The recipient's finance officer, and each officer, employee, or agent who handles or has in his custody more than one hundred dollars (\$100.00) of grant funds at any time, or who handles or has access to the recipient's inventories, shall be bonded in accordance with G.S. 159-29;
- (8) Each recipient shall maintain records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;
- (9) A system for procedures for procurement and property management shall be provided in accordance with Rule .0908 and Rule .0909 of this Section;
- (10) All cash receipts must be deposited with, or to the credit of, the finance officer. This includes program revenues, reimbursements of travel, vendor payments or other items previously recorded as expenditures, and all other grant monies from the Department;
- (11) Recipients must develop a systematic method to assure timely and appropriate resolution of audit findings and recommendations;
- (12) Recipients shall require subgrantees to adopt the standards set forth in this Rule;
- (13) Recipients shall comply with the Office of Management and Budget Circular A-87, entitled Cost Principles for State and Local government. In applying OMB A-87 the term "federal agency" shall mean the Department;
- (14) Recipients shall record the receipt and expenditure of project revenues from taxes, special assessments, levies, fines, etc., in accordance with generally accepted accounting principles;
- (15) Subrecipients shall comply with the Office of Management and Budget Circular A-110, entitled Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.
- Authority G.S. 14-234; 143B-10; 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496.*
- .0912 AUDIT**
- (a) The recipient's financial management systems shall provide for audits to be made by the recipient or at the recipient's direction, in accordance with the following:
- (1) The recipient shall provide for an audit of its CDBG program on an annual basis for any fiscal year in which twenty-five thousand (\$25,000) or more in CDBG funds are received in accordance with the annual independent audit procedures set forth in G.S. 159-34;
- (2) The CDBG program audit shall be performed in conjunction with the regular annual independent audit of the recipient and shall contain an examination of all financial aspects of the CDBG program as well as a review of the procedures and documentation supporting the recipient's compliance with applicable statutes and regulations; CDBG program funds may only be used to pay for the CDBG portion of the audit costs;
- (3) The recipient shall submit the Annual Audit Report to the Division, including the information identified in Paragraph (b) of this Rule, along with an Annual Performance Report as required by Rule .1101 of this Subchapter; and
- (4) The Division may require separate closeout audits to be prepared by the recipient in accordance with Paragraph .0913 (e) of this Section.
- (b) Audits shall comply with the requirements

set forth in this Paragraph:

- (1) Audits will include, at a minimum, an examination of the systems of internal control, systems established to insure compliance with laws and regulations affecting the expenditure of grant funds, financial transactions and accounts, and financial statements and reports of recipient organizations;
 - (2) Financial statements shall include footnotes, comments which identify the statements examined, the period covered, identification of the various programs under which the recipient received CDBG funds, and the amount of the awards received;
 - (3) Audits shall be made in accordance with the GENERAL ACCOUNTING OFFICE STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES AND FUNCTIONS, THE GUIDELINES FOR FINANCIAL AND COMPLIANCE AUDITS OF FEDERALLY ASSISTED PROGRAMS, any compliance supplements approved by the Federal Office of Management and Budget (OMB), and generally accepted auditing standards established by the American Institute of Certified Public Accountants;
 - (4) The audit shall include the auditor's opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification;
 - (5) The auditors' comments on compliance and internal control shall:
 - (A) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses;
 - (B) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of State or Federal laws and regulations that could have a material effect on the financial statements and reports;
 - (C) Contain an expression of positive assurance with respect to compliance with requirements for tested items and negative assurance for untested items;
 - (D) Comment on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies;
 - (E) Comment on corrective action taken or planned by the recipient;
 - (6) Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the Division of the need to extend the retention period. The audit work papers shall be made available upon request to the Division and the General Accounting Office or its designees;
 - (7) If during the course of the audit, the auditor becomes aware of irregularities in the recipient organization the auditor shall promptly notify the Division and recipient management officials about the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets;
 - (8) Selection of an independent auditor shall be in accordance with Rule .0908 of this Section.
- (c) A "single audit," in which the regular independent auditor will perform an audit of all compliance aspects for all federal grants along with the regular financial audit of the recipient, is permissible. Where feasible, the recipient shall use the same auditor so that the audit will include the financial and compliance work under a single plan in the most economical manner.
- (d) Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with CDBG funds. Recipients shall take the following affirmative action to further this goal:
- (1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable;
 - (2) Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged firms;
 - (3) Consider in the contract process whether firms competing for larger audits

- intend to subcontract with small or disadvantaged firms;
- (4) Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;
- (5) Encourage contracting with consortiums of small or disadvantaged audit firms when a contract is too large for an individual small or disadvantaged audit firm; and
- (6) Use the services and assistance, as appropriate, of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce in the solicitation and utilization of small or disadvantaged audit firms.
- (e) All records, data, audit reports and files shall be maintained in accordance with Rule .0909 of this Section, unless otherwise stated in this Rule.
- (f) The provisions of this Rule do not limit the authority of the Department to make audits of recipients' organizations.

Authority G.S. 143B-10; 143B-431; 159-34; 42 U.S.C.A. 5304(d)(2),(e); 24 C.F.R. 570.492.

SECTION .1000 - COMPLIANCE REQUIREMENTS

.1011 LEAD-BASED PAINT

(a) The recipient must comply with the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4831(b)], 24 CFR Part 570.608, ~~24 CFR 570.487(e)~~, and 24 CFR Part 35, including provisions of the above:

- (1) prohibiting the use of lead-based paint;
- (2) requiring elimination of lead-based paint hazards; and
- (3) requiring notification of the hazards of lead-based paint poisoning to purchasers, owners and tenants of housing constructed prior to 1978 which was acquired or rehabilitated with CDBG assistance.

(b) All construction contracts as described in this Rule shall contain a provision prohibiting the use of lead based paint.

(c) This Subchapter incorporates by reference 24 CFR 570-487(c) and "Lead-Based Paint Hazard Reduction Guidelines for North Carolina Small

Cities CDBG Recipients" (November 1, 1993), including subsequent amendments and editions. Copies of the this Section and the Guidelines are available for public inspection from the Division of Community Assistance. Single copies are available from this Division in Raleigh, North Carolina at no charge.

(d) In lieu of the testing procedures set forth in the Guidelines, the recipient may forego testing and abate all applicable surfaces in accordance with the methods set out in the Guidelines.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(4); 24 U.S.C.A. 4821 through 4846; 24 C.F.R. 487(c).

SECTION .1200 - CONTINGENCY PROJECTS

.1202 ELIGIBILITY REQUIREMENTS

Applicants must meet the ~~respective~~ eligibility requirements (~~described in either Rule .0502, .1302, or .1402 that relate to the type of project proposed by the applicant.~~)

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

SECTION .1300 - HOUSING DEVELOPMENT PROJECTS

.1302 ELIGIBILITY REQUIREMENTS

(a) Applications for Housing Development funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight. Applicants that do not meet these requirements will not be rated or funded.

(b) Applicants shall have the capacity to administer a Community Development Block Grant Program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant Programs, and the applicant's fiscal accountability as demonstrated in other state or federal Programs or local government financial reports; and

- (2) the rate of expenditure of funds in previously funded Community Development Block Grant Programs.
- (c) Housing Development projects will not be competitively rated by the Division, but may be limited to specific eligible activities.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.1303 SELECTION CRITERIA

Selection criteria will be announced by the Division at least 45 days prior to accepting applications for this category. The Division may accept applications on a continuous basis for development grants periodically, at any time after the announcement of selection criteria.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

SECTION .1500 - INTERIM ASSISTANCE

.1501 DESCRIPTION

The Interim Assistance grant category includes activities directed toward the development of affordable housing units and eligible activities in which a majority of funds are directed toward promoting the creation or retention of jobs principally for persons of low and moderate income. All program income resulting from the CDBG expenditure, as determined at the time of the grant application, must be returned to grant recipients or to the Department as provided under Rule .0907 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1502 ELIGIBILITY REQUIREMENTS

(a) Applications for Interim Assistance must demonstrate that the project shall be completed and program income at least equal to the grant award returned to the Department or the recipient within the approved project period not to exceed 36 months of the grant award in accordance with Rule .0907 of this Subchapter.

(b) Projects which are designed to provide assistance for the creation of jobs must comply with the requirements of 4 NCAC 1K .0302.

(c) Projects which are designed to develop affordable housing for low and moderate income persons must maintain rents for low and moderate income families at affordable levels, as determined by use of the HUD Housing Develop-

ment Action Grant formula.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1503 SELECTION CRITERIA

Criteria shall be announced by the Division at least 60 days prior to its acceptance of applications in this category.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1504 FUNDS AVAILABLE

The amount of funds from the current allocation used for 36 month Interim Assistance grants shall be based upon the aggregate draw down rate of funds awarded from the allocation received from HUD three years prior to the current allocation. Specifically, it shall be limited to 75 percent of the percentage of funds not drawn down from the allocation received from HUD three years prior to the current allocation as of June 30 of the current year. Up to 50 percent of the current allocation may be used for Interim Assistance projects which will be completed in less than 18 months.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1505 PRELIMINARY AWARDS

The Division shall announce preliminary grant awards after review and evaluation of Interim Assistance applications. A grant agreement shall not be extended to a recipient until the recipient demonstrates to the Division that it has received from the developer an irrevocable letter of credit or comparable instrument guaranteeing that the amount of CDBG dollars provided in assistance to the developer will be returned to the recipient at the completion of the project. A preliminary award may be withdrawn by the Division if an acceptable instrument has not been provided to and approved by the Division within 90 days from the date of the preliminary award. If a recipient that has received a preliminary award demonstrates that special circumstances warrant, the Division may grant an extension of time for providing the instrument subject to the provisions in Rule .0104 of this Subchapter. In no case shall the time for providing the instrument exceed six months from the preliminary grant award date.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

SECTION .1600 - COMMUNITY INVESTMENT FOR ECONOMIC OPPORTUNITY

.1601 DESCRIPTION

(a) This category includes activities in which a majority of funds are directed toward expanding economic opportunities principally for persons of low to moderate income. Activities must be carried out by an eligible non profit organization incorporated in North Carolina.

(b) Funds will be made available as a loan, and may be used for the acquisition of real property, site preparation, construction and permanent financing of buildings (including any related pre development fees), renovation of buildings, equipment, and furnishings and fixtures. Funds will come from the proceeds collected from repayments of loans that have been returned to the state from Economic Development projects.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1602 ELIGIBILITY REQUIREMENTS

(a) Applications must demonstrate that at least 51 percent of the CDBG funds proposed for each activity will benefit low and moderate income persons. Project design may not benefit moderate income persons to the exclusion of low income persons.

(b) A person who is authorized by the non profit to act on its behalf must sign a letter committing the organization to achieving the 51 percent benefit and to securing the other funds that are part of the project.

(c) Applicants must have the capacity to administer a CDBG program. The following areas may be examined to determine capacity:

- (1) Audit and monitoring funds on previously funded CDBG programs, and the applicant's fiscal accountability as demonstrated in other state and federal programs or local government financial reports; and
- (2) The rate of expenditure of funds and past accomplishments of other project commitments in previously funded CDBG programs.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1603 SELECTION CRITERIA

Projects will be evaluated in accordance with the

annual statement of program design as approved by HUD.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1604 PRELIMINARY AWARDS

(a) Preliminary grant awards will be announced after review and evaluation of an application. A Grant Agreement shall not be extended to a locality until a Legally Binding Commitment with the participating non profit entity has been executed, and approved by the Division. The Legally Binding Commitment shall incorporate project specific implementation requirements reflecting key project elements; including activities necessary for the project to proceed and goals to be met.

(b) The Legally Binding Commitment must be submitted to and approved by the Division within 90 days of the preliminary award announcement. A preliminary award may be withdrawn if a Legally Binding Commitment is not approved within the 90 day period. Subject to the provisions in Rule .0104 of this Subchapter, an extension of time for executing the Legally Binding Commitment subject to acceptable assurances and a timetable from all parties involved may be granted. In no case shall the time for executing a Legally Binding Commitment exceed six months from the preliminary grant award date.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Medical Assistance intends to amend rule cited as 10 NCAC 50B .0406.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 1:30 p.m. on April 18, 1994 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action: Amendment neces-

sary to identify those individuals in residential group facilities or nursing facilities for whom policy requires the application of deductible policy in the determination of eligibility for other covered services when the individuals cost of care in the facility will not be covered by Medicaid.

Comment Procedures: Written comments concerning this amendment must be submitted by April 14, 1994, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC, 27603 Attn: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0400 - BUDGETING PRINCIPALS

.0406 DEDUCTIBLE

(a) Deductible shall apply to a client in the community in private following living quarters or residential group facilities, except that a client in long term care who is expected to return to his home within six months retains his private living status. arrangements:

- (1) In the community, in private living quarters; or
- (2) In a residential group facility; or
- (3) In a long term care living arrangement when the client:
 - (A) Has enough income monthly to pay the Medicaid reimbursement rate for 31 days, but does not have enough income to pay the private rate plus all other anticipated medical costs; or
 - (B) Is under a sanction due to a transfer of resources as specified in Rule .0312 of this Subchapter; or
 - (C) Does not yet have documented prior approval for Medicaid payment of nursing home care; or
 - (D) Resided in a newly certified facility in the facility's month of certification; or
 - (E) Chooses to remain in a decertified facility beyond the last date of Medicaid payment; or
 - (F) Is under a Veterans Administration (VA) contract for payment of cost of

care in the nursing home.

(b) The client or his representative shall be responsible for providing bills, receipts, insurance benefit statements or Medicare EOB to establish incurred medical expenses and his responsibility for payment. If the client has no representative and he is physically or mentally incapable of accepting this responsibility, the county shall assist him.

(c) Expenses shall be applied to the deductible when they meet the following criteria:

- (1) The expenses are for medical care or service recognized under state or federal tax law;
- (2) The are incurred by a budget unit member;
- (3) They are incurred:
 - (A) During the certification period for which eligibility is being determined and the requirements of Paragraph (d) of this Rule are met; or
 - (B) Prior to the certification period and the requirements of Paragraph (e) of this Rule are met.

(d) Medical expenses incurred during the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The expenses are not subject to payment by any third party including insurance, government agency or program except when such program is entirely funded by state or local government funds, or private source; or
- (2) The private insurance has not paid such expenses by the end of the application time standard; or
- (3) For certified cases, the insurance has not paid by the time that incurred expenses equal the deductible amount; or
- (4) The third party has paid and the client is responsible for a portion of the charges.

(e) The unpaid balance of a Medical expense incurred prior to the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The medical expense was:
 - (A) Incurred within 24 months immediately prior to:
 - (i) The month of application for prospective or retroactive certification period or both; or
 - (ii) The first month of any subsequent certification period; or

- (B) Incurred prior to the period described in Subparagraph (e)(1)(A) of this Rule; and a payment was made on the bill during that period; and
- (2) The medical expense:
 - (A) Is a current liability;
 - (B) Has not been applied to a previously met deductible; and
 - (C) Insurance has paid any amount of the expense covered by the insurance.
- (f) Incurred medical expenses shall be applied to the deductible in chronological order of charges except that:
 - (1) If medical expenses for Medicaid covered services and non-covered services occur on the same date, apply charges for non-covered services first; and
 - (2) If both hospital and other covered medical services are incurred on the same date, apply hospital charges first; and
 - (3) If a portion of charges is still owed after insurance payment has been made for lump sum charges, compute incurred daily expense to be applied to the deductible as follows:
 - (A) Determine average daily charge excluding discharge date from hospitals; and
 - (B) Determine average daily insurance payment for the same number of days; and
 - (C) Subtract average daily insurance payment from the average daily charge to establish client's daily responsibility.
- (g) Eligibility shall begin on the day that incurred medical expenses reduce the deductible to \$0, except that the client is financially liable for the portion of medical expenses incurred on the first day of eligibility that were applied to reduce the deductible to \$0. If hospital charges were incurred on the first day of eligibility, notice of the amount of those charges applied to meet the deductible shall be sent to the hospital for deduction on the hospital's bill to Medicaid.
- (h) The receipt of proof of medical expenses and other verification shall be documented in the case record.

Authority G.S. 108A-54; 42 C.F.R. 435.732; 42 C.F.R. 435.831; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File Number C-C-74-483; Alexander v. Flaherty Consent Order filed February 14, 1992.

**TITLE 11 - DEPARTMENT
OF INSURANCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 6A .0802.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 10:00 a.m. on March 31, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action: Defines licensee requirements.

Comment Procedures: Written comments may be sent to George Brown at P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call George Brown at (919) 733-7487 or Ellen Sprenkel at 733-4529.

**CHAPTER 6 - AGENT SERVICES
DIVISION**

**SUBCHAPTER 6A - AGENT SERVICES
DIVISION**

**SECTION .0800 - CONTINUING
EDUCATION**

.0802 LICENSEE REQUIREMENTS

(a) Life and health licensees shall obtain 12 ICECs during each calendar year in approved life and health courses.

(b) Property and liability licensees shall obtain 12 ICECs during each calendar year in approved property and liability courses.

(c) Any person holding more than one license to which this Section applies shall obtain 18 ICECs during each calendar year, including a minimum of six ICECs for each kind of license.

(d) An instructor shall receive the maximum ICECs awarded to a student for the course.

(e) Licensees shall not receive ICECs for the same course more often than one time in any three calendar year period except when there are major revisions within the course. The Commissioner shall determine whether the revisions are substan-

tial enough to qualify for additional ICECs within a three calendar year period.

(f) Licensees do not have to obtain ICECs for the calendar year in which they are initially licensed.

(g) Licensees shall receive ICECs for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(h) Licensees shall not receive ICECs for courses completed prior to January 1, 1991.

(i) Licensees shall maintain records of all ICECs for three years following the obtaining of such ICECs, which records shall be available for inspection upon the Commissioner's request.

(j) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the requirements of this Section, except for the mandatory statute and rule update.

(k) Licensees shall be required to complete only the mandatory statute and rule update prescribed in Paragraph (p) of this Rule if they:

- (1) are age 65 or older; and
- (2) have been continuously licensed in the line of insurance for at least 25 years; and either
- (3) hold a nationally recognized professional designation for the line of insurance. Acceptable designations include those listed in 11 NCAC 6A .0803 (a) and (b); or
- (4) meet the requirements of Subparagraphs (1) and (2) of this Paragraph and certify to the Department of Insurance annually they are inactive agency owners who neither solicit applications for insurance nor take part in the day to day operation of the agency.

(l) Courses completed prior to the issue date of a new license do not meet the requirements of this Section for that new license.

(m) No credit will be given for courses taken before they have been approved by the Department.

(n) Persons who hold adjuster licenses shall obtain 12 ICECs during each calendar year in approved property and liability courses, ~~including, in calendar year 1993 and each even numbered calendar year thereafter, the mandatory statute and rule update required by Paragraph (p) of this Rule.~~ As used in this Section, "licensee" includes a

person who holds an adjuster license and who is required to comply with this Section.

(o) ~~In calendar year 1994 and in each even numbered calendar year thereafter, each licensee shall complete an approved course that comprises information about and instruction in insurance and insurance related statutes and administrative rules, including recent changes or developments in those statutes and rules. The Commissioner may also approve courses that also include relevant court decisions.~~

(p) Each agent holding an active surplus lines license with an effective date before January 1, 1994, must take a surplus lines course as part of the agent's 1994 property and liability continuing education requirement. Each agent issued a surplus lines license in 1994 must take a surplus lines course as part of the agent's 1995 property and liability continuing education requirement.

Statutory Authority G.S. 58-2-40; 58-33-130.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Justice intends to amend rule cited as 12 NCAC 1 .0212.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 10:00 a.m. on March 31, 1994 at the N.C. Department of Justice, Olivia Raney Building, 1st Floor Conference Room, Raleigh, N.C. 27602.

Reason for Proposed Action: Amend internal grievance procedure to conform to policy approved by the State Personnel Commission at their February 3, 1994 meeting.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from March 14, 1994 through April 14, 1994. Written comments must be delivered or mailed to Special Deputy Attorney General Lars F. Nance, 104 Fayetteville Street Mall, P.O. Box 629, Raleigh, N.C. 27602-0629.

CHAPTER 1 - DEPARTMENTAL RULES

SECTION .0200 - PERSONNEL RULES

.0212 GRIEVANCE PROCEDURE

(a) Step 1. If an employee has a problem or grievance, within 15 days it should first be discussed with his immediate supervisor. Within five working days, the supervisor shall respond to the employee. An employee who wishes to file a formal grievance, on a work-related problem, shall submit a written statement to the Department's Personnel Director within 15 calendar days of the incident giving rise to the grievance. The Personnel Director will notify the employee's supervisor that a grievance has been filed. A meeting shall take place between the appropriate supervisor and employee within 10 calendar days of the date the Department was notified of the grievance. The Supervisor is to provide the employee with a written answer within 10 calendar days from the date of the meeting between the employee and supervisor. If the employee is not satisfied with the Step 1 decision, he may move to Step 2, within 10 calendar days of receiving the Step 1 decision.

(b) Step 11. If the decision of the supervisor is not satisfactory to the employee, or if he fails to receive an answer within the designated period provided in Step 1, he may then present his grievance or problem to his division head within 5 days. The division head then has five days to respond to the employee. The employee may appeal to the Departmental Personnel Director requesting that the appeal be reviewed. This appeal shall be in writing. The Personnel Director shall, after consultation with Division Management, designate the level of management responsible for rendering a decision on the appeal and provide the designee with relevant information and procedural instructions. In cases where such reviews would be redundant, Step 2 may be waived by Division Management. Normally, a Step 2 designee will render his decision no more than 10 calendar days from the date of his designation. If it is not possible for a decision to be reached within 10 days, the employee will be advised on a continuing and current basis by the designee of the status of the grievance and the proposed date for reaching a decision. The designee will provide, in writing, to the employee, supervisor, and Departmental Personnel Director his decision and if applicable, any recommended solutions to the grievance. If the recommendation involves an exception to Departmental policy, the designee will consult with the Department's Per-

sonnel Director before rendering a decision in order to ensure compliance with Departmental policy. Copies of all correspondence shall be forwarded to the Department's Personnel Director by the designee. If the employee is not satisfied with the Step 2 decision, he must appeal to Step 3, within 15 calendar days of receiving the Step 2 decision. If the employee is not satisfied with the Step 2 decision, he must appeal to Step 3, within 15 calendar days of receiving the Step 2 decision. With respect to a grievance concerning an oral warning, a written warning or a final written warning, the Step 2 decision is the final decision and is not appealable.

(c) Step III. If the decision of the division head is not satisfactory to the employee, within 5 days he may then appeal to the grievance committee. With the approval of the Attorney General and subject to the right of the employee to appeal to the State Personnel Commission the grievance committee's decision shall be final. After Steps 1 and 2 have been exhausted, the employee may request that his complaint be heard by a Grievance Review Committee. The appeal shall be filed in writing, and must be received by the Department's Personnel Director within 15 calendar days from the date the grievant receives the Step 2 decision. The Personnel Director shall inform the Step 2 decision-maker of receipt of the appeal notice. The Step 1, Step 2, and Step 3 appeal notices, Division management's responses, and all relevant disciplinary actions taken against the grievant shall be submitted by Division management, to the Personnel Director, within 10 calendar days of management's receipt of the Step 3 appeal notice. Upon receipt of the grievant's notice of appeal and Division management's response, the Department's Personnel Director shall determine if the matters raised in the appeal are grievable and if the appeal is timely filed. If the appeal is deficient in either regard, the Departmental Personnel Director shall inform the grievant and Division management in writing. Questions concerning whether the grievance can proceed to Step 3, or is timely filed, will be decided by the Department Personnel Director. The Departmental Personnel Director's decision on whether a grievance is appealable, and timely filed, shall be final except when the employee has a right of appeal to the State Personnel Commission under state law. The Departmental Personnel Director shall determine whether the grievance will be reviewed through a Step 3 Grievance Committee hearing or through a non-hearing review of relevant documents and inform the parties accordingly. In a non-hearing review, the

Departmental Personnel Director will assign the grievance to a Personnel Section staff member. Within 30 calendar days, following the deadline for receipt of supplemental information, the assigned staff member shall submit a memorandum report to the Attorney General. Upon receipt of the above-referenced report, the Attorney General's review and decision shall be in accordance with the provisions established for appeals assigned for hearing. In the hearing review process, the Departmental Personnel Director will assign the grievance to a Grievance Committee. The Committee Chair shall schedule the hearing to commence within a reasonable time after receipt of the appeal notice. The Committee Chair shall send a formal notice of hearing to the parties 15 days prior to the hearing date. Before the scheduled hearing, the Committee Chair shall confer with the parties to determine their interest in attempting a resolution of the issues without going to hearing. The parties' participation in such discussion is voluntary. Offers of settlement made by management representatives must be authorized by Division management and be consistent with State and Departmental policies and procedures. All settlements of Step 3 grievances, arrived at with or without the participation of the Committee Chair, shall be reported to the Committee Chair for certification and approval by the Attorney General. Any settlement approved by the Attorney General shall serve as the final disposition of the matter and operates as a waiver of further appeal rights. Within 30 calendar days from the conclusion of the hearing, the Committee Chair will submit a written report to the Attorney General containing findings of fact and the Grievance Committee's conclusions, plus a recommended course of action. If additional time is needed to complete the report, the parties shall be notified. The Attorney General or his designated agent shall review the Grievance Committee's report and recommendations. The Attorney General may adopt the Grievance Committee's recommendation in whole or in part, or may choose any other course of action that he deems appropriate. The Attorney General's decision shall constitute the final Department decision. It shall be in writing and mailed via certified mail, return receipt requested, to the grievant at his address of record within 30 calendar days from the date the Grievance Committee's report is received in the Attorney General's office. If more time is needed by the Attorney General, the parties involved shall be notified.

(d) MEDIATION. In the event of termination when there has been a pre-dismissal conference, or

the right to the pre-dismissal conference has been made available but not utilized, Step I and Step II will be deemed to be waived. Within any step of the grievance procedure in this Rule a joint request, in writing, from the grievant and the supervisor, involved at the current step of the internal process, for mediation may be sent to the Office of State Personnel; Employee Relations Division; Administration Building; 116 W. Jones Street; Raleigh, N.C. 27603-8003. The joint request for mediation will suspend the time framework of the Department's grievance procedure for no more than 15 working days. Beyond this time, both parties must agree, in writing, to further delay. If the mediation process resolves the grievance, the mediator will draft a document setting out the terms and conditions of the resolution. This document will be signed by the grievant and a representative of the Department. If the mediation effort reaches an impasse, or if the mediator determines that mediation is not viable, he will notify the Departmental Personnel Director. The grievance will resume at the same step in the process it occupied before the mediation effort reached an impasse.

Statutory Authority G.S. 114-1; 114-1.1; 114-2B; 114-4; 114-4.2; 114-4.2A; 114-4.2B; 114-4.2C; 114-4.2D; 126-5; 126-12; 126-16; 126-34; 126-37.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0113; 10D .0003; 10F .0305, .0333; 10H .0101.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 10:00 a.m. on April 11, 1994 at the Archdale Building, 3rd Floor Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action:

15A NCAC 10B .0113 - To clarify and implement the registration and reporting requirement for bear, deer, wild boar and wild turkey.

15A NCAC 10D .0003 - To allow deer hunting on Cherry Farm Game Land, Wayne County.

15A NCAC 10F .0305 - To enlarge no-wake zone on Lockwood Folly River.

15A NCAC 10F .0333 - To establish a no-wake zone at Buster Boyd Bridge on Lake Wylie.

15A NCAC 10H .0101 - To clarify the definition of those species that may be taken on Controlled Hunting Preserves for Domestically Raised Game Birds.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from March 15, 1994 to April 14, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0113 BIG GAME KILL REPORTS

The carcass of each bear, wild turkey, deer and wild boar shall be tagged at the site of the kill with the appropriate big game tag which has been validated by cutting out the month and day of the kill. All harvested ~~big game animals~~ bear, deer, and wild boar must be registered at a wildlife cooperator agent or reported through the toll free Big Game Telephone Reporting System, before they are skinned or dressed or dismembered for consumption except in those cases where the kill occurs in a remote area which prevents the animal from being transported as an entire carcass. In these cases, the carcass may be tagged, skinned, quartered, and transported to the wildlife cooperator agent for reporting or reported within 24 hours through the Big Game Telephone Reporting System. A wildlife cooperator agent located within the immediate area of open season will supply a big game kill report card in duplicate or an authorization number may be obtained through the Big Game Telephone Reporting System. The report card must be completed to show the information called for thereon. All wild turkey must be registered through the toll free Big Game Telephone

Reporting System, before they are skinned or dressed or dismembered for consumption. The tag shall be affixed to the carcass at a location and in such manner as to be visible upon inspection from the outside, and it is unlawful to affix the tag at any location or in any manner so as to conceal it from visibility upon ordinary inspection. It is unlawful to remove the tag from the carcass prior to the kill being properly reported either through completion of the report card or through the Big Game Telephone Reporting System or at any time thereafter until the carcass is finally skinned or dressed for consumption. The authorization number given through the Big Game Telephone Reporting System or the duplicate copy of the big game kill report card must be retained by the hunter and shall thereafter constitute his permit to continue in possession of the carcass. Otherwise, the continued possession of the bear, wild turkey, deer or wild boar shall be unlawful.

Persons who are by law exempt from the big game hunting license are not required to tag the carcass but shall report each kill as above required, and, in lieu of the tag, the word "exempt" together with the reason therefor (parent's license, landowner, agricultural lessee) shall be written on the original of the big game kill report card.

Any big game tag which has been detached from the tag card issued with the big game license prior to the killing and tagging of the big game animal shall be seized by a wildlife enforcement officer.

Statutory Authority G.S. 113-134; 113-270.3; 113-276.1.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with

no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or fur-bearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates:

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Buncombe County--Browntown Farms Game Land

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

~~Wayne County Cherry Farm Game Land~~

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicat-

ed in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breeze Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving. Wild turkey hunting is by permit only.) Caswell County--Caswell Game Land Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's backbone.)

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with

muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.) Wild turkey hunting is by permit only. Robeson County--Robeson Game Land Robeson County--Bullard and Branch Hunting Preserve Game Land Sampson County--Sampson Game Lands Stokes County--Sauratown Plantation Game Land

Wayne County--Cherry Farm Game Land. (The use of centerfire rifles and handguns is prohibited.)

Yadkin County--Huntsville Community Farms Game Land

- (3) Any game may be taken on the following game lands during the open season, except that:

- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
- (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
- (i) Except for the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
- (ii) In the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all

game lands except on bear sanctuaries.

- (D) On Croatan, Jordan, and Shearon Harris Game Lands, and posted waterfowl impoundments on Goose Creek Game Lands, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. After November 1, on the Pamlico Point, Campbell Creek, and Spring Creek impoundments, located on the Goose Creek Game Lands, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Anson, New Lake, Pungo River, and Gull Rock Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (H) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (I) On Angola Bay, Butner-Falls of Neuse, Croatan, Goose Creek, and Hofmann Forest Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (J) Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only during June, July,

and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;

- (K) On the posted waterfowl impoundments on the Jordan and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (L) Additional restrictions or modifications apply as indicated in parentheses following specific designations:
- Alexander and Caldwell Counties--Brushy Mountains Game Lands
Anson County--Anson Game Land
Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands
Ashe County--Elk Ridge Game Lands
Ashe County--Cherokee Game Lands
Ashe and Watauga Counties--Elk Knob Game Land
Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands
(Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)
Bertie and Washington Counties--Bachelor Bay Game Lands
Beaufort and Pamlico Counties--Goose Creek Game Land
Brunswick County--Green Swamp Game Land
Burke and Cleveland Counties--South Mountains Game Lands
Caldwell, Watauga and Wilkes Counties--Yadkin Game Land
Carteret, Craven and Jones Counties--Croatan Game Lands
Chatham County--Chatham Game Land
Chatham, Durham, Orange, and

Wake Counties--Jordan Game Lands (On areas posted as "archery zones" hunting is limited to bow and arrow. Horseback riding, ~~including all equine species~~, is ~~prohibited~~ allowed only during March, June, July, and August and on Sundays during the remainder of the year.)

Chatham and Wake Counties--Shearon Harris Game Land
Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands.
Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.
Chowan County--Chowan Game Land
Cleveland County--Gardner-Webb Game Land
Craven County--Neuse River Game Land
Currituck County--North River Game Land
Currituck County--Northwest River Marsh Game Land
Dare County--Dare Game Land (No hunting on posted parts of bombing range.)
Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land
Davidson County--Linwood Game Land
Davidson, Montgomery and Randolph Counties--Uwharrie Game Land
Duplin and Pender Counties--Angola Bay Game Land
Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. Horseback

- riding, including all equine species, is prohibited allowed only during March, June, July, and August and on Sundays during the remainder of the year.)
- (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:
- Friday and Saturday of the first week after Thanksgiving Week:
- Uwharrie and Alcoa southeast of NC 49
- Thursday and Friday of the week before Thanksgiving Week:
- Sandhills east of US 1
- Sandhills west of US 1
- Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Com-
- Gates County--Chowan Swamp Game Land
- Henderson, Polk and Rutherford Counties--Green River Game Lands
- Hyde County--Gull Rock Game Land
- Hyde County--Pungo River Game Land
- Hyde and Tyrrell Counties--New Lake Game Land
- Jones and Onslow Counties--Hofmann Forest Game Land
- Lee County--Lee Game Land
- McDowell and Rutherford Counties--Dysartsville Game Lands
- Moore County--Moore Game Land
- New Hanover County--Sutton Lake Game Land
- Person County--Person Game Land
- Transylvania County--Toxaway Game Land
- Tyrrell and Washington Counties--Lantern Acres Game Land
- Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)
- Wilkes County--Thurmond Chatham Game Land
- (5)

mission. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperators agent.

- The following game lands and Federal Wildlife Refuge are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- Bertie, Halifax and Martin Counties--Roanoke River Wetlands; Bertie County--Roanoke River National Wildlife Refuge.
- Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
- Davie--Hunting Creek Swamp Waterfowl Refuge
- Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on the first and second Saturdays in October).

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0305 BRUNSWICK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Lockwoods Folly River. ~~An area bounded on the north by the north bank of Lockwoods Folly River, on the south by Mud Flats in the Lockwoods Folly River and extending 300 feet north and 300 feet south of Varnums Landing at Genoese Point. An area on that portion of the Lockwood Folly River beginning 1500 feet north of the boat ramp at the need of State Road 1123 and extending downstream to a point 800 feet south of said boat ramp and the portion of Mill~~

- (2) Creek beginning at its intersection with the Lockwood Folly River and extending upstream for 100 feet.
- (2) Calabash River. An area located on the Calabash River beginning 100 feet west of the Billy Cox Landing and extending 100 feet east of Captain Harry's Landing.
- (3) State Port Authority Small Boat Harbor. Beginning at the Intracoastal Waterway on the easterly side of the North Carolina State Port Authority Small Boat Harbor; thence runs along and with the easterly boundary of the said boat harbor basin and along the northerly boundary and westerly boundary thereof to a point at the intersection of the westerly boundary of said boat harbor with the highwater mark of the Intracoastal Waterway; runs thence in an easterly direction with the highwater mark of the Intracoastal Waterway to the place and point of beginning, and being the entire small boat harbor in Southport.
- (4) Shallotte River. The portion of the Shallotte River beginning at its intersection with the Intracoastal Waterway and extending from the northern boundary of the Intracoastal Waterway for a distance of 500 feet to the north, to be marked by appropriate markers.
- (5) Big Davis Creek. That part of Big Davis Creek within 100 yards of Sportsman Inn at Blue Water Point Marina near Long Beach.
- (6) Town of Ocean Isle Beach. Those waters in the canals, both natural and concrete, which are located on the south side of the Intracoastal Waterway in the Town of Ocean Isle Beach.
- (b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.
- (c) Placement and Maintenance of Markers. ~~The Board of Commissioners of Brunswick County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. Subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, the following agencies are designated suitable agencies for the placement and~~

- maintenance of markers implementing this Rule:
- (1) The Board of Aldermen of Varnamtown as to areas indicated in Paragraph (a), Subparagraph (1) of this Rule.
- (2) The Board of Commissioners of Brunswick County as to areas indicated in Paragraph (a), Subparagraphs (2) - (6) of this Rule.

Statutory Authority G.S. 75A-3; 75A-15.

.0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule applies only on that portion of the waters of Lake Wylie which lies within the boundaries of Mecklenburg and Gaston Counties and to the restricted zones indicated by Paragraphs (b), (c), (d), (e), (f), (g) and (h) of this Rule on such waters.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-launching ramp in Mecklenburg County.

(c) Speed Limit Near Piers. No person shall operate a vessel at greater than no-wake speed limit within 50 yards of any pier operated by Mecklenburg County for public use.

(d) Speed Limit at McDowell Park. No person shall operate a vessel at greater than no-wake speed on the waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County, including the entrances to the coves on either side of Copperhead Island.

(e) Speed Limit at Gaston County Wildlife Club Cove. No person shall operate a vessel at greater than no-wake speed on the waters of the cove at the Gaston County Wildlife Club on South Point Peninsula in Gaston County.

(f) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established in Mecklenburg County with the approval of the Executive Director, or his representative.

(g) Restricted Swimming Areas. No person operating a vessel shall permit it to enter any marked swimming area established in Mecklenburg County with the approval of the Executive Director, or his representative.

(h) Speed Limit Near Boating Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any boat launching ramp, dock, pier, marina, boat storage structure or boat service area on that part of Lake Wylie, including the South Fork River arm, which

is located in Gaston County.

(i) No person shall operate a vessel at greater than no-wake speed within the area 250 feet to the north and 150 feet to the south of the Buster Boyd Bridge on Lake Wylie.

(j) (f) Placement and Maintenance of Markers. The Boards of Commissioners of Mecklenburg County and Gaston County are designated suitable agencies for placement and maintenance of markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking the restricted zones indicated in this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Statutory Authority G.S. 75A-3; 75A-15.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0100 - CONTROLLED HUNTING PRESERVES FOR DOMESTICALLY RAISED GAME BIRDS

.0101 LICENSE TO OPERATE

A controlled hunting preserve license shall entitle the holder or holders thereof, and their guests, to kill or take, during an extended season, starting October 1 and ending March 31, on such preserves by shooting only, and without regard to sex or bag limits, domestically-raised pheasants, chukar partridges, Hungarian partridges, Mallard ducks (as defined by the United States Fish and Wildlife Service) or other domestically raised game birds, except wild turkey. Application for controlled hunting preserve licenses shall be made on standard forms obtainable from the commission. Applicants must be prepared to show satisfactory proof of ownership of the land contained in the proposed hunting preserve or that they have this land under proper lease for the duration of the license period.

Statutory Authority G.S. 113-134; 113-273.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10H .0813.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 10:00 a.m. on March 30, 1994 at the Archdale Building, 3rd Floor Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: To eliminate prohibition against selling captive-bred raptors.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from March 15, 1994 to April 14, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0800 - FALCONRY

.0813 RAPTOR PROPAGATION PERMIT

(a) Raptor propagation permits shall be obtained from the Commission and from the U.S. Fish and Wildlife Service prior to the captive breeding of any raptor.

(b) Permit requirements, application procedures, issuance criteria, and additional permit conditions for issuance of federal raptor propagation permits are set forth in 50 C.F.R. 21.30 which is hereby incorporated by reference and shall include any subsequent amendments.

- (1) The state permit shall run concurrently with the federal permit and will expire on the same date as the federal permit. The state permit may be revoked or renewal may be denied for violation of the provisions of 50 C.F.R. 21.30.
- (2) A copy of all applications and other records required under 50 C.F.R. 21.30 must be submitted to the Commission and to the U.S. Fish and Wildlife Service.

(c) Protected species of raptors listed as species of special concern in 15A NCAC 10I .0005, when

lawfully acquired, may be propagated.

(d) Sale of ~~captive bred raptors and~~ raptors taken from the wild is prohibited.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .2601 and .2610.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:30 p.m. on April 7, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action:

15A NCAC 18A .2601 - To define "commissary", a word added at the request of industry, in the recent amendments to the pushcart rules.

15A NCAC 18A .2610 - To allow beverages, their ice, and garnishes to be displayed without sneeze guards. This is being added at the request of the Food Service Advisory Committee.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 14, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation standards or equal shall be considered as approved. The National Sanitation Foundation Commercial Food Service Equipment Standards are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from NSF International, P.O. Box 13014, Ann Arbor, Michigan 48113-0140, at a cost of three hundred and twenty five dollars (\$325.00). Food which complies with requirements of the North Carolina Department of Agriculture or United States Department of Agriculture and the requirements of this Section shall be considered as approved.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the guidelines of the N.C. Department of Human Resources, Divi-

- sion of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) (3) "Department of Environment, Health, and Natural Resources" or "Department" means the North Carolina Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.
- (5) (4) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (6) (5) "Eating and cooking utensils" means any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
- (7) (6) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.
- (8) (7) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (9) (8) "Food stand" means those food service establishments which prepare or serve foods and which do not provide seating facilities for customers to use while eating or drinking. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.
- (10) (9) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (11) (10) "Local Health Director" means the administrative head of a local health department or his authorized representative.
- (12) (11) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (13) (12) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (14) (13) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (15) (14) "Private club" means a private club as defined in G.S. 130A-247(2).
- (16) (15) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- (17) (16) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (18) (17) "Restaurant" means all establishments and operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (19) (18) "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (20) (19) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (21) (20) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial

- process wastewater.
- (22) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (23) "Temporary food stand" means those food or drink stands which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (24) "Temporary restaurant" means a restaurant, as defined in Item (17) (18) of this Rule, that operates for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

Statutory Authority G.S. 130A-248.

.2610 STORAGE: HANDLING: AND DISPLAY OF FOOD

(a) All unwrapped or unenclosed food and drink on display shall be protected in such manner that the direct line from the customer's mouth to the food shall be intercepted by glass or similar shields and shall be otherwise protected from public handling or other contamination, except that approved hand openings may be permitted on counter fronts. A beverage station staffed with an employee who is serving on a continual basis, is not required to provide glass or similar shields for beverages, ice and garnishes. The employee shall remove contaminated beverages, ice or garnishes from the beverage station. This requires standard counter protector installations for all cafeteria counters, salad bars, and similar type service to prevent contamination by customers' coughing and sneezing.

(b) Customer self-service is permitted only under the following conditions:

(1) Buffet-style Service. This style of service is not acceptable unless protective shields, equivalent to cafeteria counter protectors, are provided to intercept contamination; however, protective shields are not required for buffet style service which is provided for a club, organization or private individual as a planned event and from which the public is excluded. When food is served in this manner, the following requirements shall be met:

(A) Potentially hazardous foods shall be

- replaced at least hourly;
- (B) Food containers shall be arranged conveniently so customers' clothing does not come in contact with food;
- (C) Long-handled serving spoons, tongs, or other utensils shall be provided and used;
- (D) At the conclusion of the event, food that has not been consumed, shall be discarded.
- (2) Customer Self-Service. When customers are allowed to return to a self-service area, clean and sanitized tableware other than flatware, beverage cups and glasses, shall be made available for each return trip. Written notice shall be provided informing customers that clean tableware needs to be used for return trips.
- (3) Family-style Service. In establishments featuring this style of service, patrons elect to participate in the family dining-table type of service. Ordinary serving dishes and utensils are acceptable.
- (c) Foods, except raw vegetables which are to be cooked, shall be kept under cover when not in the process of preparation and serving. Meat and other potentially hazardous foods shall not be stored on the floor, or in direct contact with shelves and racks of cold storage boxes, or permitted to come in contact with dirty clothes, newspapers, pasteboard, previously-used paper, or other contaminated surfaces. If open dishes and pans containing food are stacked, food shall be protected with wax paper or foil. Food transported to a restaurant shall not be accepted unless properly wrapped, covered, or otherwise protected. Food and drink shall not be served to the general public in the kitchen. In the case of "drive-in" restaurants, all food shall be covered or wrapped before delivery to patrons' vehicles, to exclude vermin or insects, dust, and other contamination.
- (d) Containers for onions, slaw, mustard, and other condiments shall have covers and be kept covered when not in use. Sugar shall be dispensed with either pour-type dispensers or individual packages. Waiters and waitresses shall avoid unnecessary handling of food in the process of serving.
- (e) The establishment shall be kept free of flies, rodents, roaches, ants, and other vermin. Animals and fowl shall not be permitted in a restaurant, provided that seeing eye dogs accompanying blind persons and service dogs accompanying handi-

capped persons shall be exempted. All supplementary means necessary for the elimination of flies, such as the installation of fly-repellant fans, and the routine use of approved insecticides shall be employed.

(f) Dustless methods of floor cleaning shall be used and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.

Statutory Authority G.S. 130A-248.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .2601 and .2635.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on April 7, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action:

15A NCAC 18A .2601 - To add the definitions for limited food service establishment and transient to explain terms use in Rules .2635 and .2638.

15A NCAC 18A .2635 - To introduce special rules for establishments with limited menus.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 14, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must

either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Editor's Note: The new definition 15A NCAC 18A .2601(3) for "Commissary" shown in bold is proposed to be effective July 1, 1994 and is also noticed in this issue of the Register.

**CHAPTER 18 - ENVIRONMENTAL
HEALTH**

SUBCHAPTER 18A - SANITATION

**SECTION .2600 - SANITATION OF
RESTAURANTS AND OTHER
FOODHANDLING ESTABLISHMENTS**

.2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation standards or equal shall be considered as approved. The National Sanitation Foundation Commercial Food Service Equipment Standards are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from NSF International, P.O. Box 13014, Ann Arbor, Michigan 48113-0140, at a cost of three hundred and twenty five

- dollars (\$325.00). Food which complies with requirements of the North Carolina Department of Agriculture or United States Department of Agriculture and the requirements of this Section shall be considered as approved.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the guidelines of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and push-carts. The commissary may or may not serve customers at the food stand's location.
- (4) (4) "Department of Environment, Health, and Natural Resources" or "Department" means the North Carolina Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.
- (5) (4) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (6) (5) "Eating and cooking utensils" means any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
- (7) (6) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.
- (8) (7) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (9) (8) "Food stand" means those food service establishments which prepare or serve foods and which do not provide seating facilities for customers to use while eating or drinking. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.
- (10) (9) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (11) (11) "Limited food service establishment" means a food service establishment which:
- (a) operates for a total of 60 days or less per year, or
 - (b) in the case of a transient limited food service establishment, operates no more than 15 consecutive days per location.
- (12) (10) "Local Health Director" means the administrative head of a local health department or his authorized representative.
- (13) (11) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (14) (12) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (15) (13) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (16) (14) "Private club" means a private club as defined in G.S. 130A-247(2).
- (17) (15) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- (18) (16) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (19) (17) "Restaurant" means all establishments and operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S.

- 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (20) (18) "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (21) (19) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (22) (20) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (23) (21) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (22) "Temporary food stand" means those food or drink stands which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (24) (23) "Temporary restaurant" means a restaurant, as defined in Item (17) (19) of this Rule, that operates for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (25) "Transient" means a food service establishment which moves from one location to another.
- ~~Protection against flies and other insects shall be provided by screening or by effective use of fans.~~
- (2) Where food or griddles are exposed to the public or to dust or insects, they shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit handling and serving of the food.
- (3) All griddles, warmers, spatulas, refrigerators, and other utensils and equipment shall be cleaned routinely and maintained in a sanitary manner.
- (4) Running water under pressure shall be provided. The water supply shall be approved and of a safe, sanitary quality. Provisions shall be made for heating water for the washing of utensils and equipment. At least a single vat sink, large enough in which to wash cooking utensils, pots, and pans, must be provided. At least one drainboard or counter top space must be provided.
- (5) Facilities shall be provided for employees' handwashing. These may consist of a pan, soap, and single-use towels.
- (6) Convenient and approved toilet facilities shall be provided for use by employees. Public toilet facilities provided on the grounds are acceptable if reasonably convenient, adequate, and kept clean. Sewage shall be disposed of in an approved manner.
- (7) Potentially hazardous foods shall be refrigerated in accordance with Rule .2609 of this Section. All food shall be stored, handled, and displayed in accordance with Rule .2610(a) through (d) of this Section. Food service equipment shall be stored in accordance with Rule .2620 of this Section.
- (8) Garbage and refuse shall be collected and stored in standard water-tight garbage cans provided with tightfitting lids or other approved containers or methods. Garbage and refuse shall be removed at least daily and disposed of in a sanitary manner. Waste water shall be so disposed of as not to create a nuisance. Each operator shall keep his immediate premises clean.
- (9) All food served shall be clean, wholesome, and free from adulteration. Potentially hazardous foods such as

Statutory Authority G.S. 130A-248.

.2635 LIMITED FOOD SERVICE ESTABLISHMENTS

The following requirements shall be satisfied in order for temporary food stands to qualify for a permit under .2602 of this Section:

- (1) Temporary food stands shall be located in clean surroundings and kept in a clean and sanitary condition. They shall be so constructed and arranged that food, utensils, and equipment will not be exposed to insects, dust, and other contamination.

- cream filled pastries and pies, and salads such as potato, chicken, ham, crab, etc., shall not be served in a temporary food stand. Hamburgers shall be obtained from an approved market or plant in patties separated by clean paper, or other wrapping material, and ready to cook. Wrapped sandwiches shall be obtained from an approved source. Poultry shall be prepared for cooking in an approved market or plant. Drinks served shall be limited to packaged, canned, or bottled drinks, packaged milk, coffee, or carbonated beverages from approved dispensing devices.
- (10) Food prepared by local groups shall be prepared in an approved kitchen, and such groups shall maintain a record of the type and origin of such foods. These foods shall be prepared, transported, and stored in a sanitary manner protected from contamination and spoilage.
- (11) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough and nasal discharge, shall work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces, with disease causing organisms or transmitting the illness to other persons.
- Limited food service establishments shall comply with all the restaurant requirements of this Section, except that the following provisions shall apply in lieu of Rules .2607, .2610(f), .2617(d), .2618(d), .2624, .2626(d), .2627 through .2629, and .2630(a):
- (1) The permit for a limited food service establishment shall be posted at a conspicuous place where it can be readily seen by the public at all times. Permits for limited food service establishments shall expire on March 31 of each year. A new permit from the Department shall be obtained before the limited food service establishment shall be allowed to operate each year; however, transient food service establishments shall obtain a permit at each location prior to operating. Transitional permits shall not be issued. Limited food service establishments shall not be subject to grading.
 - (2) The limited food service establishment shall submit to the local health department a proposal for review and approval which includes a menu, plans and specifications for the proposed limited food service establishment, and location and dates of operation at least four weeks prior to construction or commencement of operations.
 - (3) Limited food service establishments shall not prepare any potentially hazardous foods prior to the day of sale.
 - (4) Potentially hazardous foods which have been heated at the limited food service establishment and remain at the end of the day shall not be sold.
 - (5) Foods which have been heated at the limited food service establishment shall not be reheated or placed in refrigeration to be used another day.
 - (6) Salads containing potentially hazardous foods shall not be prepared by the limited food service establishment.
 - (7) All meats, poultry, and fish shall be purchased in a pre-portioned form.
 - (8) Domestic equipment which is in good repair and operating properly may be used. However, food brought into a limited food service establishment shall not have been prepared in a domestic kitchen. At least a two compartment utensil-washing sink with drainboards on each end or counter space on both sides of the sink shall be provided for air-drying of clean sanitized utensils. The sink shall be of sufficient size and depth to submerge, wash, rinse, and sanitize utensils.
 - (9) Any area where food is handled, prepared, cooked, or stored shall be provided with a weatherproof roof.
 - (10) Floors, walls and ceilings of limited food service establishments which are located in permanent structures on the effective date of this Rule shall meet the requirements in Rules .2627 and .2628 of this Section no later than July 1, 1996. Floors, walls, and ceilings of limited food service establishments which are located in permanent structures constructed after the effective date of this Rule shall comply with Rules .2727 and .2728 of this Section. Limited food service establishments which are required by this Rule to have floors shall use dustless

- methods of floor cleaning and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals. Transient limited food service establishments shall not be required to comply with Rules .2627 and .2628 of this Section.
- (11) The limited food service establishment shall be connected to necessary utilities such as electrical service at all times food is present in the establishment.
- (12) Convenient and approved toilet facilities shall be provided for use by employees. Public toilet facilities provided on the grounds are acceptable if kept clean. There is no requirement for limited food service establishments to provide toilet facilities for the public.
- (13) Durable, legible signs which read that employees must wash their hands before returning to work shall be posted or stenciled conspicuously at each employees' hand washing facility.
- (14) Garbage can liners shall be required for all garbage receptacles unless the site has approved can wash facilities.

Statutory Authority G.S. 130A-248.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to adopt rules cited as 15A NCAC 18C .0409, .0710 - .0715, .1537 and amend 18C .0102, .0201 - .0203, .0301 - .0303, .0305, .0307 - .0308, .0401 - .0405, .0407, .0501 -.0502, .0703, .0707 -.0708, .0802 - .0805, .1002, .1004, .1101 -.1102, .1104 -.1105, .1107, .1201, .1203, .1207, .1209, .1211, .1301 -.1303, .1406, .1507 - .1509, .1511 -.1512, .1516, .1519 -.1521, and .1533.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:30 p.m. on April 7, 1994 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action:

- 15A NCAC 18C .0102 - to clarify the applicability of these Rules by adding new definitions.
- 15A NCAC 18C .0201 - to allow non-transient, non-community water systems to use surface water supply without filtration subject to appropriate rules.
- 15A NCAC 18C .0202 - to incorporate the expanded water supply watershed classification categories adopted by the Environmental Management Commission as applicable to treatment of surface water by all public water systems.
- 15A NCAC 18C .0203 - to increase the protection of well water supplies and include non-transient, non-community wells.
- 15A NCAC 18C .0301; .0302; .0303; .0305; .0307; .0308 - to expand the applicability of the requirements for submitting plans, specifications, and reports to include non-transient, non-community water systems.
- 15A NCAC 18C .0401 - to expand the applicability of the minimum design requirements for approval of plans and specifications to include non-transient, non-community water systems.
- 15A NCAC 18C .0402 - to increase the protection of well water supplies and clarify the yield and laboratory certification requirements.
- 15A NCAC 18C .0403 - to allow flexibility in the maximum daily draft of a water treatment plant from unimpounded streams and allow for existing impoundments to be approved as raw water sources.
- 15A NCAC 18C .0404 - to increase the protection of water treatment facilities, to require separate chemical feeders for each chemical applied, and to allow provisions for proper recycling of treatment plant wastewater.
- 15A NCAC 18C .0405 - to modify the design criteria for hydropneumatic and elevated water storage tanks.
- 15A NCAC 18C .0407 - to increase the protection of electrical systems.
- 15A NCAC 18C .0409 - to establish and clarify the limitations on service connections to public water supply systems with and without a local water supply plan.
- 15A NCAC 18C .0501 - to retitle the Section.
- 15A NCAC 18C .0502 - to expand the applicability of the supplemental design criteria to include non-transient, non-community water systems and to provide for the approval of alternate designs.
- 15A NCAC 18C .0703 - to delineate the design requirements for flocculator paddles.
- 15A NCAC 18C .0707 - to provide more detailed

requirements for upflow clarifiers.

15A NCAC 18C .0708 - to provide more detailed design requirements for gravity filters.

15A NCAC 18C .0710 - to establish the requirements for use of conventional treatment processes with reduced sedimentation detention times.

15A NCAC 18C .0711 - to establish the requirements for use of alternative filtration treatment technologies.

15A NCAC 18C .0712 - to establish the requirements for use of direct filtration.

15A NCAC 18C .0713 - to establish the limitations and requirements for use of pressure filters.

15A NCAC 18C .0714 - to establish the requirements for pilot plant studies.

15A NCAC 18C .0715 - to establish the standards for evaluation of water system design features not otherwise specifically addressed.

15A NCAC 18C .0802 - to expand the requirement for water systems to use peak demand charts to include campgrounds and non-transient, non-community systems.

15A NCAC 18C .0803 - to expand the pressure tank volume requirement to include campgrounds.

15A NCAC 18C .0804 - to remove unnecessary reference.

15A NCAC 18C .0805 - to expand the elevated storage capacity requirement to include community and non-transient, non-community water systems.

15A NCAC 18C .1002 - to clarify the requirements for disinfection of wells.

15A NCAC 18C .1004 - to provide for the disinfection of filters using an alternative to chlorine.

15A NCAC 18C .1101; .1102; .1104; .1105; .1107 - to expand the applicability of the rules protecting unfiltered water supplies to include all classifications of public water systems.

15A NCAC 18C .1201 & .1203 - to expand the applicability of the rules protecting filtered water supplies to include all classifications of public water systems.

15A NCAC 18C .1207 - to ease the restrictions on domestic animals in the margins of reservoirs.

15A NCAC 18C .1209 - to incorporate the expanded water supply watershed classification categories adopted by the Environmental Management Commission as applicable to protection of reservoirs.

15A NCAC 18C .1211 - to incorporate the expanded water supply watershed classification categories adopted by the Environmental Management Commission as applicable to ground absorption sewage systems.

15A NCAC 18C .1301 - to broaden the applicability of the requirements for the operator in charge

from just community to all public surface water systems requiring disinfection only and to clarify information required on monthly reports.

15A NCAC 18C .1302 - to broaden the applicability of the requirements for the operator in charge from just community to all filtered public water systems, to incorporate the expanded water supply watershed classification categories adopted by the Environmental Management Commission, and to clarify information required on monthly reports.

15A NCAC 18C .1303 - to broaden the applicability of the requirements for the operator in charge to include non-transient, non-community well systems and to clarify information required on monthly reports.

15A NCAC 18C .1406 - to increase the fluoride reporting frequency from monthly to weekly.

15A NCAC 18C .1507 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements of the lead and copper monitoring.

15A NCAC 18C .1508 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements of the inorganic chemical monitoring, but requiring nitrate and nitrite sampling be conducted as required of transient non-community water systems.

15A NCAC 18C .1509 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements for monitoring for sodium.

15A NCAC 18C .1511 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements to provide treatment for the control of iron concentration.

15A NCAC 18C .1512 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements to provide treatment for the control of manganese concentration.

15A NCAC 18C .1516 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements for special monitoring for inorganic and organic chemicals.

15A NCAC 18C .1519 - to incorporate by reference the provisions of 40 CFR 141.26 pertaining to the monitoring frequency of Radioactivity and to require travel trailer parks, campgrounds, and

marina slips that do not serve 25 or more of the same persons more than 6 months per year to monitor radioactivity if the Secretary determines that the system is in an area subject to contamination.

15A NCAC 18C .1520 - to incorporate by reference the provisions of 40 CFR 141.15 pertaining to the maximum contaminant levels for Radium.

15A NCAC 18C .1521 - to incorporate by reference the provisions of 40 CFR 141.16 pertaining to maximum contaminant levels for man-made Radionuclides.

15A NCAC 18C .1533 - to exempt travel trailer parks, campgrounds, and marina slips that do not serve 25 or more of the same persons more than 6 months per year from the requirements of total trihalomethane monitoring.

15A NCAC 18C .1537 - to establish the standards for drinking water additives.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 14, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Fiscal Note: Rule 15A NCAC 18C .0203 affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 24, 1994, OSBM on February 25, 1994, N.C. League of Municipalities on February 24, 1994, and N.C. Association of County Commissioners on February 24, 1994.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .0100 - PROTECTION OF PUBLIC WATER SUPPLIES

.0102 DEFINITIONS

(a) The definitions contained in G.S. 130A-2, G.S. 130A-290, and G.S. 130A-313 are hereby adopted incorporated by reference in accordance with G.S. 150B-14(e) including any subsequent amendments and editions. Copies of this material are available for inspection and may be obtained from the Department of Environment, Health, and Natural Resources, Division of Environmental Health, Public Water Supply Section, P.O. Box 29536, Raleigh, North Carolina 27626-0536 at no charge.

(b) The definitions contained in 40 C.F.R. 141.2 are hereby adopted incorporated by reference in accordance with G.S. 150B-14(e) including any subsequent amendments and editions except the following definitions are not adopted:

- (1) "Disinfection",
- (2) "Maximum containment level",
- (3) "Person",
- (4) "Public Water System", and
- (5) "Supplier of water".

This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$.30) per page for each additional page.

(c) In addition to the definitions adopted by reference, the following definitions shall apply to this Subchapter:

- (1) "Act" means the North Carolina Drinking Water Act.
- (2) "Class I reservoir" shall mean a reser-

- voir from which water flows by gravity or is pumped directly to a treatment plant or to a small intervening storage basin and thence to a treatment plant.
- (3) "Class II reservoir" shall mean a reservoir from which the water flows by gravity or is pumped to a Class I reservoir prior to final entrance to a water treatment plant.
- (4) "Class III reservoir" is a large impoundment used for electric power generation, flood control, and similar purposes, and which also serves as a source of raw water for a community water system.
- (5) "Cross-connection" shall mean:
- (A) any physical connection between a potable water supply system and any other piping system, sewer fixture, container, or device, whereby water or other liquids, mixtures, or substances may flow into or enter the potable water supply system;
 - (B) any potable water supply outlet which is submerged or is designed or intended to be submerged in non-potable water or in any source of contamination or;
 - (C) an air gap, providing a space between the potable water pipe outlet and the flood level rim of a receiving vessel of less than twice the diameter of the potable water pipe.
- (6) "Community Water System intake" shall mean the structure at the head of a conduit into which water is diverted from a stream or reservoir for transmission to water treatment facilities.
- (7) "Disinfection" means a process which inactivates pathogenic organisms in water.
- (8) "Fecal Coliform" means bacteria consistently found in the intestine of man and other warm blooded animals which are not normally disease producing but serve as indicators of recent fecal contamination. They are members of the Family Enterobacteriaceae, Genus Escherichia, Species Coli.
- (9) "Mobile Home Park" means a site or tract of land where spaces are provided for lease or rental only to mobile home occupants.
- (10) "Mobile home subdivision" means a subdivided site or tract of land in which lots are sold for use by mobile home occupants.
- (11) "Non-potable water supply" shall mean waters not approved for drinking or other household uses.
- (12) "Potable water supply" shall mean water which is approved for drinking or other household uses.
- (13) "Raw water" means shall mean surface water or groundwater which because of bacteriological quality, chemical quality, turbidity, color, or mineral content makes it unsatisfactory as a source for a community water system without treatment.
- (14) "Raw water reservoir" means shall mean a natural or artificial impoundment used for the primary purpose of storing raw water to be subsequently treated for use as a source for a community water system.
- (15) "Service connection" shall mean a piped connection from a water main for the purpose of conveying water to a building or onto a premise for human use.
- (16) "Water supply product" means any chemical or substance added to a public water system in conjunction with a treatment technique or material used in construction of a public water system. The term includes any material used in the manufacture of public water system components, appurtenances, any pipe, storage tank or valve which comes in contact with water intended for use in a public water system.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.2.

SECTION .0200 - LOCATION OF SOURCES OF PUBLIC WATER SUPPLIES

.0201 SURFACE SUPPLIES FOR PUBLIC WATER SYSTEMS

- (a) A surface supply may be used for a community or a non-transient, non-community water system with disinfection and without filtration if it complies with the provisions of this Section and Rule .2005 of this Subchapter.
- (b) Such water supply shall be derived from uninhabited wooded areas.
- (c) The entire watershed shall be either owned or controlled by the person supplying the water or

be under the control of the federal or state government; however, no such new water supply shall be created except where the water system owner shall own in its entirety the watershed from which the water will be obtained.

(d) The water after disinfection shall be of potable quality as determined by bacteriological and chemical tests performed by a certified laboratory. The presence of contaminants shall not exceed the limits set forth in Section .1500 of this Subchapter.

(e) The water source shall have an WS-I classification as established by the Environmental Management Commission and shall meet the quality standards for that classification.

Statutory Authority G.S. 130A-315; 130A-318; P.L. 93-523.

.0202 REMOVAL OF DISSOLVED MATTER AND SUSPENDED MATTER

Any surface water which is to receive treatment for removal of dissolved matter or suspended matter in order to be used for a community public water system shall be obtained from a source which meets the WS-I, WS-II, or WS-III, WS-IV or WS-V stream classification standards established by the Environmental Management Commission and shall be properly protected from objectionable sources of pollution as determined by a sanitary survey of the watershed made by an authorized representative of the Department. The source supply shall be sufficient in capacity to satisfy the anticipated needs of the users for the period of design.

Statutory Authority G.S. 130A-315; 130A-318; P.L. 93-523.

.0203 PUBLIC WELL WATER SUPPLIES

Any site or sites for any water supply well to be used as a community or non-transient, non-community water system shall be investigated by an authorized representative of the Division of Environmental Health. Approval by the Division is required in addition to any approval or permit issued by any other state agency. The site shall meet the following requirements for at the time of approval:

(1) The well shall be located on a lot so that the area within 100 feet of the well shall be owned or controlled by the person supplying the water. The supplier of water shall be able to protect the well lot from potential sources of pollution and to

construct landscape features for drainage and diversion of pollution. When the supplier of water is unable to locate water from any other approved source or when an existing well is temporarily out of operation, a representative of the Division may approve a smaller well lot area.

(2) The well shall be located at least 100 feet from any sewer or other potential sources of pollution unless the sewer is constructed of materials and joints that are equivalent to water main standards, in which case the sewer shall be at least 50 feet from the well. The minimum horizontal separation between the well and known potential sources of pollution shall be as follows:

(a) 100 feet from any sanitary sewage disposal system, sewer, or a sewer pipe unless the sewer is constructed of material and joints that are equivalent to water main standards, in which case the sewer pipe shall be at least 50 feet from the well;

(b) 200 feet from a subsurface sanitary sewage treatment and disposal system designed for 3000 or more gallons of wastewater a day flows, unless it is determined that the well water source utilizes a confined aquifer;

(c) 500 feet from a septic disposal site;

(d) 100 feet from buildings, mobile homes, permanent structures, animal houses or lots, or cultivated areas to which chemicals are applied;

(e) 100 feet from surface water;

(f) 100 feet from a chemical or petroleum fuel underground storage tank with secondary containment;

(g) 500 feet from a chemical or petroleum fuel underground storage tank without secondary containment;

(h) 500 feet from the boundary of a ground water contamination area;

(i) 500 feet from a sanitary landfill or non-permitted non-hazardous solid waste disposal site;

(j) 1000 feet from a hazardous waste disposal site or otherwise in a location which conflicts with the North Carolina Hazardous Waste Management Rules cited as 15A NCAC 13A;

(k) 300 feet from a cemetery or burial ground; and

- (1) 100 feet from any other potential source of pollution.
- (3) The Department may require greater separation distances or impose other protective measures when necessary to protect the well from pollution; the Department shall consider as follows:
- (a) The hazard or health risk associated with the source of pollution;
- (b) The proximity of the potential source to the well;
- (c) The type of material, facility or circumstance that poses the source or potential source of pollution;
- (d) The volume or size of the source or potential source of pollution;
- (e) Hydrogeological features of the site which could affect the movement of contaminants to the source water;
- (f) The effect which well operation might have on the movement of contamination; and
- (g) The feasibility of providing additional separation distances or protective measures.
- (4) (3) The site lot shall be graded or sloped so that surface water is diverted away from the wellhead. The site lot shall not be subject to flooding.
- (5) When the supplier of water is unable to locate water from any other approved source and when an existing well can no longer provide water that meets the requirements of this Subchapter, a representative of the Division may approve a smaller well lot and reduced separation distances for temporary use.

Statutory Authority G.S. 130A-315; 130A-318; P.L. 93-523.

SECTION .0300 - SUBMISSION OF PLANS: SPECIFICATIONS: AND REPORTS

.0301 APPLICABILITY: PRIOR NOTICE

(a) All persons, including units of local government, intending to construct, alter, or expand a community or non-transient, non-community water system shall give written notice thereof, including submission of applicable plans, specifications and engineering reports, to the Division of Environmental Health, as required by the rules of this Section. A non-community water system using surface water or ground water under the direct influence of surface water shall be subject to the

provisions of this Rule. An adjacent water system shall not be subject to the provisions of this Rule unless the adjacent water system is constructed, altered or expanded on or after July 31, 1987. Non-transient, non-community water systems shall not be subject to the provisions of this Rule unless constructed, altered, or expanded on or after July 1, 1994.

(b) All reports, plans and specifications shall be submitted to the Division at least 30 days prior to the date upon which action by the Division is desired.

(c) If revisions to the plans or specifications are necessary, the engineer who prepared them will be notified. Revised plans and specifications will constitute a resubmittal and additional time will be required for review.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0302 PLANS

(a) Procedure Applicable to all Projects, Extensions, or Changes. All plans, specifications or other data intended for submission to the Division of Environmental Health, ~~in compliance with the statutes covering community water systems~~, shall be submitted in triplicate for review by the Public Water Supply Section, Division of Environmental Health, P.O. Box 29536, Raleigh, North Carolina 27626-0536.

(b) Plans for Community Water Systems. Plans should consist of legible prints having black, blue, or brown lines on a white background suitable for microfilming. The plans shall not be more than 36 inches wide and 48 inches long.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0303 SUBMISSIONS REQUIRED BY ENGINEER AND WATER SUPPLIER

Detailed plans and specifications ~~for community water systems~~ shall be prepared by a professional engineer licensed to practice in the State of North Carolina. The plans shall bear an imprint of the registration seal of the engineer. Upon completion of the construction or modification ~~of the community water system~~, the water supplier shall submit a statement signed by a registered professional engineer and affixed with his professional engineering seal stating that construction was completed in accordance with approved plans and specifications and revised only in accordance with the provisions of Rule .0306 of this Section. The

statement shall be based upon adequate observations during and upon completion of construction by the engineer or a representative of the engineer's office who is under the engineer's supervision.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0305 APPROVAL OF PLANS NECESSARY BEFORE CONTRACTING

(a) No construction of ~~community water systems~~ shall be undertaken, and no contract for construction, alteration, or installation of ~~community water systems~~ shall be entered into prior to approval of plans and specifications by the Department.

(b) Units of local government which have an adopted water system extension policy, upon submission to and approval of a copy of their policy by the Department, may be excluded from the requirements of submitting plans and specifications for water main extensions, and that would not have adverse effect upon the existing system supply or pressure, provided the following requirements are met:

- (1) Plans and specifications for all such extensions shall be prepared by or under the direct supervision of an engineer licensed to practice in the State of North Carolina.
- (2) All plans shall be approved by the units of local government engineering department or its consulting engineers prior to the commencement of construction.
- (3) The Department shall have approved the extension policy submitted by the unit of local government prior to construction commencing.
- (4) The extension policy submitted for review and approval by the Department shall provide for establishing ownership, operation and maintenance of water system extensions, and shall constitute prior notice of proposed construction.
- (5) Where design is to be based on a local government's standard specifications in lieu of written separate specifications for each extension project, the standard specifications shall have been previously approved by the Department.
- (6) The local government shall have obtained from the Department a letter stating they have met the aforementioned requirement and are excluded

from the requirement for submitting detailed plans and specifications for each minor extension in keeping with the intent of this Rule.

(7) Where such minor additions or extensions have been made an annual up-to-date plan of the entire system shall be submitted for review and approval by the Division.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0307 ENGINEER'S REPORT

(a) The owner, when required, shall submit to the Division, an engineering report in duplicate covering the basic factors and principles considered in planning of the project.

(b) Such engineering reports shall be required for projects involving new ~~community~~ water systems, modification of existing ~~community~~ water ~~system~~ systems, development or modification of surface water sources and other ~~community~~ water system projects requiring significant engineering.

(c) Before preparation of the engineering report, the consulting engineer may wish to consult with the office or field staff of the Division of Environmental Health concerning the proposed source of supply, treatment methods, and alternatives.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0308 TYPE AND FORM OF EXHIBITS

(a) Engineer's Report. The engineer's report (including any preliminary plans) shall contain the following information where applicable:

- (1) description of any existing water system related to the project;
- (2) identification of the municipality, community, ~~or area,~~ or facility to be served by the proposed water system;
- (3) the name and address of the owner;
- (4) a description of the nature of the establishments and of the area to be served by the proposed water system;
- (5) provisions for future extension or expansion of the water system;
- (6) a projection of future water demand or requirements for service;
- (7) any alternate plans for meeting the water supply requirements of the area;
- (8) financial considerations of the project including:
 - (A) any alternate plans;

- (B) costs of integral units;
(C) total costs;
(D) operating expenses; and
(E) methods of financing costs of construction, operation and maintenance;
- (9) population records and trends, present and anticipated future water demands, present and future yield of source or sources of water supply;
- (10) character of source or sources of water supply, including:
(A) hydrological data;
(B) stream flow rates;
(C) chemical, mineral, bacteriological, and physical qualities; and
(D) location and nature of sources of pollution; and
- (11) proposed water treatment processes including:
(A) criteria and basis of design of units,
(B) methods or procedures used in arriving at recommendations, and
(C) reasons or justifications for any deviations from conventional or indicated process or method.
- (b) Plans. Plans for water supply systems shall consist of the following:
- (1) title information including the following:
(A) name of the city, town, board, commission or other owner for whom the plans were prepared;
(B) the locality of the project;
(C) the general title of the set of drawings and prints;
(D) the specific title of each sheet;
(E) the date; and
(F) the scales used;
 - (2) a preliminary plat plan or map showing the location of proposed sources of water supply;
 - (3) a general map of the entire water system showing layout and all pertinent topographic features;
 - (4) detail map of source or sources of water supply;
 - (5) layout and detail plans for intakes, dams, reservoirs, elevated storage tanks, standpipes, pumping stations, treatment plants, transmission pipelines, distribution mains, valves, and appurtenances and their relation to any existing water system, and the location of all known existing structures or installations and natural barriers that might interfere with the proposed construction; and
- (6) the north point.
- (c) Specifications. Complete detailed specifications for materials, equipment, workmanship, test procedures and specified test results shall accompany the plans. The specifications shall include, where applicable:
- (1) the design and number of chemical feeders, mixing devices, flocculators, pumps, motors, pipes, valves, filter media, filter controls, laboratory facilities and equipment, and water quality control equipment and devices;
 - (2) provision for continuing with minimum interruption the operation of existing water supply facilities during construction of additional facilities;
 - (3) safety devices and equipment; and
 - (4) procedure for disinfection of tanks, basins, filters, wells and pipes.
- (d) A supplier of water which has submitted a local water supply plan in accordance with G.S. 143-355(l) shall also provide a copy to the Division of Environmental Health.
- Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.*
- ## **SECTION .0400 - WATER SUPPLY DESIGN CRITERIA**
- ### **.0401 MINIMUM REQUIREMENTS**
- The design criteria given in this Section are the minimum requirements for approval of plans and specifications of ~~community water systems~~ by the Division of Environmental Health, Department of Environment, Health, and Natural Resources. The Department provides additional guidelines supplemental criteria for design of water systems in 15A NCAC 18C .0500 - .1000.
- Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.*
- ### **.0402 WATER SUPPLY WELLS**
- (a) Well Construction. The construction of water supply wells shall conform to well construction regulations and standards of the Division of Environmental Management, N.C. Department of Environment, Health, and Natural Resources, codified in 15A NCAC 2C.
- (b) Upper Terminal of Well. The well casing shall neither terminate below ground nor in a pit. The pump pedestal for above ground pumps of

every water supply well shall project not less than six inches above the concrete floor of the well house, or the concrete slab surrounding the well. The well casing shall project at least one inch above the pump pedestal. For submersible pumps the casing shall project at least six inches above the concrete floor or slab surrounding the well head.

(c) Sanitary Seal. The upper terminal of the well casing shall be sealed watertight with the exception of a vent pipe or vent tube having a downward-directed, screened opening.

(d) Concrete Slab or Well House Floor. Every water supply well shall have a continuous bond concrete slab or well house concrete floor extending at least three feet horizontally around the outside of the well casing. Minimum thickness for the concrete slab or floor shall be four inches.

(e) Sample Tap and Waste Discharge Pipe. Faucets or spigots shall be provided for sampling both raw water prior to treatment and treated water prior to delivery to the first customer. Sample spigots shall not be threaded for hose connection. Threaded hose bibs shall be equipped with anti-siphon devices. A water sample tap and piping arrangement for discharge of water to waste shall be provided.

(f) Physical Security and Well Protection. A water supply well shall be secured against unauthorized access and protected from the weather. One of the following structures shall be provided:

- (1) Well house. A well house shall be constructed as follows:
 - (A) Structures shall comply with applicable provisions of state and local building codes;
 - (B) Drainage shall be provided by floor drain, wall drain, or slope to door;
 - (C) Access into the structure shall be a doorway with minimum dimensions of 36 inches wide and 80 inches high; and
 - (D) The structure shall have adequate space for the use and maintenance of the piping and appurtenances. If treatment is provided at the well, the provisions of Rule .0404(a) of this Section shall apply.
 - (E) The structure shall be secured with lock and key.
- (2) Prefabricated structures. A prefabricated structure shall be constructed as follows:
 - (A) A well-head cover shall be hinged and constructed so that it can be lifted by

- one person;
- (B) A locking mechanism shall be provided; and
- (C) Permanent fastening to the slab (such as with bolts) shall not be permitted.
- (3) Fencing and temperature protection. Fencing and temperature protection shall be constructed as follows:
 - (A) The fence height shall be a minimum of six feet;
 - (B) The fence shall be constructed of chain link with locked access;
 - (C) The fence shall enclose the well; hydropneumatic tank, and associated equipment;
 - (D) Access shall be provided for adequate maintenance and operation; and
 - (E) The well, piping, treatment equipment, and electrical controls shall be protected against freezing. Wrapping with insulation is acceptable for appurtenances such as the air vent, meter, valves, and sample taps provided they are visible and accessible. Insulation shall be jacketed.
- (4) (g) Yield:
 - (1) Wells shall be tested for yield and drawdown. A report or log of at least a 24-hour drawdown test to determine yield shall be submitted to the Division of Environmental Health for each well.
 - (2) Wells shall be located so that the drawdown of any well will not interfere with the required yield of another well.
 - (3) The combined yield of all wells of a water system shall provide in 12 hours pumping time the average daily demand as determined in Subparagraph (f)(7) Rule .0409 of this Section.
 - (4) The capacity of the permanent pump to be installed in each well shall not exceed the yield of the well as determined by the drawdown test.
 - (5) A residential community water system using well water as its source of supply and designed to serve 50 or more residents or connections shall provide at least two wells. A travel trailer park or campground designed to serve 100 or more connections shall provide at least two wells. In lieu of a second well, another approved water supply source may be accepted.
 - (6) A totalizing meter shall be installed in the piping system from each well.

(7) The well or wells serving a mobile home park shall be capable of supplying an average daily demand of 250 gallons per day per connection. The well or wells serving residences shall be capable of supplying an average daily demand of 400 gallons per day per connection.

(g) (h) Initial Disinfection of Water Supply Well. All new wells, and wells that have been repaired or reconditioned shall be cleaned of foreign substances such as soil, grease, and oil, and then shall be disinfected. A representative sample or samples of the water (free of chlorine) shall be collected and submitted to ~~an approved a~~ certified laboratory for bacteriological analyses. After disinfection the water supply shall not be placed into service until bacteriological test results of representative water samples analyzed in ~~an approved a~~ certified laboratory are found to be satisfactory.

(h) (i) Initial Chemical Analyses. A representative sample of water from every new water supply well shall be collected and submitted for chemical analyses to the Division of Laboratory Services or to a certified laboratory approved by the Division. The results of the analysis must be satisfactory before the well is placed into service.

(i) (j) Continuous Disinfection. Equipment designed for continuous application of chlorine or hypochlorite solution or some other approved and equally efficient disinfectant shall be provided for all well water supplies introduced on or after January 1, 1972. Equipment for determining residual chlorine concentration in the water shall be specified.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0403 SURFACE WATER FACILITIES

(a) Unimpounded Stream. Both the minimum daily flow of record of the stream and the estimated minimum flow calculated from rainfall and run-off shall exceed the maximum daily draft for which the water treatment plant is designed with due consideration given to requirements for future expansion of the treatment plant. The Department may approve a water plant capacity greater than the minimum daily flow of record of the stream when rules of other government agencies will not be violated. The maximum allowable system expansion shall be based on the minimum daily flow of record of the stream.

(b) Pre-settling Reservoirs. Construction of a

pre-settling or pre-treatment reservoir shall be required where excessive bacterial concentrations or wide and rapid variations in turbidity or chemical qualities occur or where the following raw water quality standards are not met: turbidity - 150 NTU, coliform bacteria - 3000/100 ml, fecal coliform bacteria - 300/100 ml, color - 75 CU.

(c) Impoundments. Raw water storage capacity shall be sufficient to reasonably satisfy the designed water supply demand during periods of drought.

(d) Clearing of Land for Impoundment. The area in and around the proposed impoundment of class I and class II reservoirs shall be cleared as follows:

(1) The area from normal full level to five feet below the normal ~~full level pool elevation~~ of the impoundment shall be cleared and grubbed of all vegetation and shall be kept cleared until the reservoir is filled. Secondary growth shall be removed prior to flooding. ~~A margin of at least 50 feet around the impoundment shall be owned or controlled by the water supplier.~~

(2) The entire area below the five foot water depth shall be cleared and shall be kept cleared of all growth of less than six inches in diameter until the reservoir is filled. Stumps greater than six inches in diameter may be cut off at ground level.

(3) All brush, trees, and stumps shall be burned or removed from the proposed reservoir.

(e) Existing Impoundments. Existing impoundments may be approved as raw water sources as follows:

(1) The requirements of Paragraph (c) of this Rule, and Section .0200 of this Subchapter shall be met;

(2) A class I or class II reservoir shall meet the requirements of Section .1200 of this Subchapter; and

(3) The supplier of water shall have an engineer along with other qualified consultants as needed conduct a study of the impoundment and provide the Department information to determine whether the requirements of this Subchapter are met. The study shall include as follows:

(A) Plans and specifications of the impounding structure;

(B) Information concerning clearing of the

- land for impoundment as provided in Paragraph (d) of this Rule;
- (C) Information concerning sources of pollution on the watershed;
- (D) Documentation of control by the supplier of water of the impoundment and 50 foot margin around the impoundment measured from the normal pool elevation;
- (E) Information concerning the quality of the water and sediments which could cause water quality fluctuations such as lake stratification, turnover and algae bloom; and
- (F) Other information necessary to show the proposed source will meet the requirements of this Subchapter.

(f) A margin of at least 50 feet around a class I and class II reservoir measured from the normal pool elevation shall be owned or controlled by the water supplier.

(e) (g) Intakes, Pumps, Treatment Units, and Equipment. Raw water intakes, pumps, treatment units and equipment shall be designed to provide water of potable quality meeting the water quality requirements stated in Section .1500 of this Subchapter.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0404 WATER TREATMENT FACILITIES

(a) Physical Security and Facility Protection. Treatment equipment and chemicals shall be secured against unauthorized access and shall be protected against the weather as follows:

- (1) Structures shall comply with provisions of state and local building codes;
- (2) Drainage shall be provided by floor drain, wall drain, or slope to door;
- (3) Access to the structure shall be a doorway with minimum dimensions of 36 inches wide and 80 inches high or larger. The doorway shall be large enough to accommodate installation or removal of equipment; and
- (4) The structure shall have space to facilitate operation and maintenance of treatment equipment, storage of chemicals, required piping and appurtenances, electrical controls, and laboratory testing.

(b) Mixing and Dispersion of Chemicals. Provisions shall be made for adequate mixing and dispersion of chlorine and other chemicals applied

to the water. There shall be provided a minimum of 20 minutes chlorine contact time prior to pumping the water to the distribution system. All facilities treating surface water or ground water influenced by surface water shall comply with the disinfection requirements in Rule .2002 of this Subchapter.

(b) (c) **Chemical Feed Machines**

- (1) Durable chemical feed machines designed for adjustable accurate control of feed rates shall be installed for application of all chemicals necessary for appropriate treatment of the water. Chemical pretreatment using coagulant chemicals is required prior to filtration by granular filter media. Sufficient stand-by units to assure uninterrupted operation of the treatment processes shall be provided. Continuous chemical application must be protected from electrical circuit interruption which could result in overfeed, underfeed or interrupt the feed of chemicals.
- (2) Chemical feed lines from the feeders to the points of application shall be of durable material, adequate in size, corrosion resistant, easily accessible for cleaning and protected against freezing. Excessive length shall be avoided and the number of bends reduced to a minimum.

- (3) Piping and appurtenances shall be constructed of suitable material for the chemical being added and the specific application.

- (4) A separate feeder shall be used for each chemical applied.

(e) (d) **Disinfection Equipment:**

- (1) Equipment designed for application of chlorine, or some other approved, equally efficient disinfectant shall be provided. Stand-by units shall be provided. The plans and specifications shall describe the equipment in detail. Chlorinators shall be installed in tightly constructed, above ground rooms with adequate mechanical ventilation to the outside air. The capacity of exhaust fans shall be sufficient to discharge all air in the rooms every 30 seconds to 1 minute. The fans or their suction ducts shall be located not more than eight inches above floor level. Provisions for entrance of fresh air shall be made. The point of discharge shall be so

located as not to contaminate the air in any building or inhabited areas. Electrical switches for operation of fans shall be located outside the chlorinator rooms. Rooms used for storage of chlorine cylinders shall be designed as described above.

(d) (e) Safety Breathing Apparatus. Emergency Self-contained emergency breathing equipment apparatus for operators shall be stored outside rooms where gaseous chlorine is used or stored.

(e) (f) Meters and Gauges. Meters and gauges, including raw and finished water meters, shall be installed to indicate and record water flow entering the treatment plant and water pumped or conducted to the distribution system.

(f) (g) Prevention of Backflow and Back-Siphonage. Submerged inlets and interconnections whereby non-potable water, or water of questionable quality, or other liquids may be siphoned or forced into or otherwise allowed to enter the finished water supply shall not be permitted.

(g) (h) Chemical Storage. Separate space for storing at least 30 days supply of chemicals shall be provided. A separate room or partitioned space shall be provided for storage of dry fluoride chemicals or liquid fluoride chemicals in portable containers.

(h) (i) Laboratory. Adequate space, equipment, and supplies shall be provided for daily, routine chemical and bacteriological tests. A layout of laboratory furniture and equipment shall be included in the plans.

(i) (j) Toilet Facilities. Adequate toilet facilities shall be provided for the plant personnel.

(k) Waste Handling and Disposal.

(1) Provisions must be made for proper disposal of water treatment plant wastes such as clarification sludge, softening sludge, iron-manganese sludge, filter backwash water and brines. Untreated waste shall not be returned to the head of the water treatment plant.

(2) Recycling of supernatant or filtrate from waste treatment facilities treating filter wash water, sedimentation basin sludge or clarifier basin sludge to the head of the water treatment plant may be allowed when the following conditions are met:

(A) The water recycled shall be less than 10 percent by volume of the raw water entering the water treatment plant.

(B) A permit has been issued by the appropriate regulatory authority for discharge of wastes to sanitary sewer, stream, lagoon or spray irrigation.

(C) The raw water does not contain excessive algae, finished water taste and odor problems are not encountered and trihalomethane levels in the distribution system do not exceed allowable levels.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0405 STORAGE OF FINISHED WATER

(a) Ground Level Storage

(1) Water Ground Storage Tank. Finished water ground storage tanks shall be provided with a light-proof and insect-proof cover of concrete, steel or other material approved by the Division. The construction joints between side walls and the covers of concrete tanks or reservoirs shall be above ground level and above flood level; except that clearwells constructed below filters may be exempted from this requirement when total design, including waterproof joints, gives equal protection.

(2) Access Manholes. The access manholes for finished water storage tanks or reservoirs shall be framed at least four inches above the tank or reservoir covers at the opening and shall be fitted with solid covers of durable materials that overlap the framed openings and extend down around the frames at least two inches. The covers for the openings shall be hinged at one side and fitted with a locking device.

(3) Tanks or Reservoirs. The tanks or reservoirs shall have vents with screened, downward directed openings. The vent and screen shall be of corrosion resistant, durable material.

(4) Overflow. The overflow pipes for storage tanks or reservoirs shall not be connected directly to sewers or storm drains. Screens or other devices to prevent access by rodents, insects, etc. should be provided in the overflow pipe.

(5) Inlets and Outlets. Water supply inlets and outlets of storage tanks and reser-

- voirs shall be located and designed to provide adequate circulation of the water. Baffles shall be constructed where necessary to provide thorough circulation of the water.
- (6) Drain Valves. All tanks and reservoirs shall be equipped with drain valves.
- (b) Elevated Storage Tanks:
- (1) Standards. The specifications for elevated tanks, stand-pipes, towers, paints, coatings and other appurtenances shall meet the appropriate ANSI/AWWA Standards D 100 73, 84 and D 101-53(R86), and D 102-64 of the American Water Works Association, Inc., which is adopted are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina, in accordance with G.S. 150B-14(e) or approved equal standards. Copies of AWWA standards are available from Non-members may obtain copies from the American Water Works Association, 6666 W. Quincy Avenue, Denver, Colorado 80235 at a cost of eighteen dollars and fifty cents (\$18.50) for D 100-84 and nine dollars (\$9.00) for D 101-53(R86). Copies are available for public inspection at the principal address of the Division.
- (2) Elevation of Storage Tanks. The elevation of storage tanks shall be sufficient to produce a designed minimum distribution system pressure of 20 pounds per square inch at peak demand (fire flow) and 30 pounds per square inch during peak flow.
- (3) Drain. Elevated storage tanks shall be equipped with drain valves.
- (c) Hydropneumatic Storage Tanks (Pressure Tanks)
- (1) Use of Pressure Tanks. Where well yields and pumping capacities are sufficient, hydropneumatic (pressure) tanks may be used to control pumps, stabilize pressures and provide a minimum of storage. Pressure tanks shall have the capacity to maintain a minimum pressure of 30 pounds per square inch throughout periods of peak flow. Pres-
- sure tanks shall not be considered acceptable for meeting total storage requirements for water systems of over 300 connections, except as provided in Rule .0405(d) of this Section Paragraph (d) of this Rule.
- (2) Corrosion Control. Pressure tanks shall be galvanized after fabrication, provided with an approved liner or coated in accordance with ~~AWWA Standard D 102-64 of the American Water Works Association, Inc., which is adopted by reference in accordance with G.S. 150B-14(e) or approved equal standard. Copies of AWWA standards are available from the American Water Works Association, 6666 W. Quincy Avenue, Denver, Colorado 80235. Copies are available for public inspection at the principal address of the Division Rule 1537 of this Subchapter.~~
- (3) Required Parts. Pressure tanks shall have access manholes, bottom drains, pressure gauges, and properly sized safety and vacuum relief valves.
- (4) Controls. Automatic pressure, start-stop controls for operation of pumps shall be provided.
- (5) Hydropneumatic Storage Tanks. Hydropneumatic storage tanks shall conform to the construction requirements for pressure vessels adopted by the North Carolina Department of Labor and codified in 13 NCAC 13 which is adopted is hereby incorporated by reference in accordance with G.S. 150B-14(e) including any subsequent amendments and editions. Copies of the rules are available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Copies may be obtained from the Boiler and Pressure Vessel Division, North Carolina Department of Labor, 214 West Jones Street 4 West Edenton Street, Raleigh, N.C. 27603 27601 at a cost of fifteen dollars (\$15.00).
- (6) Appurtenances to hydropneumatic storage tanks such as valves, drains, gauges, sight tubes, safety devices, air-water volume controls, and chemical feed lines shall be protected against freezing.

(d) High Yield Aquifers:

- (1) Equipment. In lieu of providing elevated storage for systems over 300 connections in areas where aquifers are known to produce high yields, i.e. e.g., 400-500 gpm from an eight-inch well, a system of extra well pumping capacity, auxiliary power generating equipment, hydropneumatic tanks, controls, alarms and monitoring systems may be provided. The design and installation of such system shall assure that reliable, continuous service is provided.
- (2) Auxiliary Power. Such a system shall have an adequate number of wells equipped with sufficient pumping capacity so that the required flow rate can be maintained with the single largest capacity well and pump out of operation. Auxiliary power generating equipment shall be provided for each well sufficient to operate the pump, lights, controls, chemical feeders, alarms and other electrical equipment as may be necessary.
- (3) Pump Control. Hydropneumatic tanks designed in accordance with Paragraph (c) of this Rule and Section .0800 of this Subchapter shall be provided to maintain pressure and control the pump operation.
- (4) Alarm System. An alarm system shall be provided which will send a visual or audible signal to a constantly monitored location so that the water system operator will be advised of a primary power failure.

*Statutory Authority G.S. 130A-315; 130A-317;
P.L. 93-523.*

.0407 ELECTRICAL SYSTEMS

Electrical wiring and equipment shall comply with applicable provisions of the national, state, and local electrical codes. Protection against moisture and overheating shall be provided.

*Statutory Authority G.S. 130A-315; 130A-317;
P.L. 93-523.*

.0409 SERVICE CONNECTIONS

(a) Local Water Supply Plan. Units of local government which are operating under a local water supply plan in accordance with G.S. 143-355(l) shall not be limited in the number of service connections.

(b) No local water supply plan. A public water system which does not have a local water supply plan as stated in Paragraph (a) shall limit its number of service connections as follows:

- (1) A public water system shall meet the daily flow requirements specified in Table 1:

Table 1: Daily Flow Requirements

Type of Service Connection	Daily Flow for Design
Residential	400 gallon/connection
Mobile Home Parks	250 gallon/connection
Campgrounds and Travel Trailer Parks	100 gallon/space
Marina	10 gallon/boat slip
Marina with bathhouse	30 gallon/boat slip
Rest Homes and Nursing Homes	
with laundry120 gallon/bed
without laundry60 gallon/bed
Schools	15 gallon/student
Day Care Facilities	15 gallon/student
Construction, work, or summer camps60 gallon/person
Business, office, factory (exclusive of industrial use)	
without showers25 gallon/person/shift
with showers35 gallon/person/shift
Hospitals300 gallon/bed

- (2) A public water system serving different types of service connections shall meet the maximum daily demand calculated as follows:

- (A) Where records of the previous year are available that reflect daily usage, the average of the two highest consecutive days of record of the water treated shall be the value used to determine if there is capacity to serve additional service connections (unusual events such as massive line breaks or line flushings shall not be considered).
- (B) Where complete daily records of water treated are not available, the public water system shall multiply the daily average use based on the amount of water treated during the previous year of record by the appropriate factor to determine maximum daily demand, as follows:
- (i) A system serving a population of 10,000 or less shall multiply the daily average use by 2.5; or
 - (ii) A system serving a population greater than 10,000 shall multiply the daily average use by 2.0.

Statutory Authority G.S. 130A-315; 103A-317; P.L. 93-523.

SECTION .0500 - SUPPLEMENTAL DESIGN CRITERIA**.0501 PURPOSE**

For the protection of the public health, and pursuant to authority granted by Article 10 of Chapter 130A of the General Statutes of North Carolina, the Commission for Health Services hereby adopts the following rules (15A NCAC 18C .0500 through .1000) governing the location of sources of supply of community water systems, the design and construction of community water systems, the operation of community water systems, and the protection of community water

systems as supplemental design criteria for approval of plans and specifications.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0502 DESIGN CRITERIA

These design guidelines are intended to supplement the mandatory criteria established in the rules providing for the protection of community water systems (15A NCAC 18C) as adopted by the Commission for Health Services, and are to be used as recommended guidelines in the preparation of plans and specifications for community water

systems. Community and non-transient, non-community water systems and non-community water systems using surface water or ground water under the influence of surface water shall comply with these supplemental design criteria unless alternate design proposals are approved by the Department. The Department shall consider the following factors in approving an alternate design:

- (1) The potential health risk of using the alternate design;
- (2) The need for deviation from the supplemental design criteria;
- (3) The degree of deviation from the supplemental design criteria; and
- (4) The capability of the alternate design to meet the maximum contaminant levels, treatment techniques and other requirements of this Subchapter.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

SECTION .0700 - SURFACE WATER TREATMENT FACILITIES

.0703 MECHANICAL FLOCCULATION

(a) Basin Inlet and Outlet. The design of inlets and outlets of flocculation basins shall prevent short circuiting of the water and destruction or deterioration of the floc.

(b) Detention Period. The flocculation basins should have a theoretical detention period of not less than 20 minutes.

(c) Agitator Control. The agitators of flocculation basins shall be equipped with variable speed controls.

(d) Paddles. Peripheral speed and paddle configuration shall be designed to obtain optimum velocity gradient.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0707 SOLIDS CONTACT OR UP-FLOW UNITS

(a) Approval of Solids Contact or Up-Flow Units. Solids contact or up-flow clarification units shall be approved only where raw water characteristics are substantially constant and shall not be approved for raw waters that have wide and rapid variations in turbidity or other qualities that would adversely affect the treatment process.

(b) Water Rise Rate. The rise rate shall not exceed 1.0 gallon per minute per square foot of clarification area unless the requirements of Rule

.0711 of this Section have been satisfied.

(c) Weir Loading. Weir loading shall not exceed seven gallons per minute per foot of weir length. Horizontal flow to the collection trough shall not exceed 10 feet.

(d) Speed Agitator Equipment. Mixing and flocculation shall be accomplished by means of adjustable, variable speed agitator equipment.

(e) Sludge Withdrawal. Sludge withdrawal equipment shall include an intermittent sludge removal mechanism controlled by an adjustable automatic timer.

(f) Basin Drain. The basin should be provided with a bottom drain that is of sufficient size to empty the basin in two hours or less.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0708 GRAVITY FILTERS

(a) Filtration Rates. The standard rate of filtration for a single media filter shall be two gallons per minute per square foot. Higher filtration rates up to four gallons per minute per square foot may be approved for dual media or multi-media filters. Filtration rates in excess of four gallons per minute per square foot may be approved subject to pilot plant or plant scale demonstrations conducted in accordance with Rule .0714 of this Section.

(b) Wash Water Rate. The backwash rate of flow shall be designed to theoretically expand the filter media 50 percent.

(c) Rate Control Devices. Rate control equipment shall be provided to control or regulate the filtration rate and the backwash rate. If declining rate filtration is to be utilized, orifice plates shall be installed on each filter effluent pipe to control maximum filtration rates.

(d) Surface Washers. Filter beds shall be equipped with a revolving or fixed system of nozzles designed for uniform waterjet agitation of the entire beds.

(e) Gauges and Flow Indicators. Gauges or meters shall be installed to indicate the rate of filtration, the loss of head, and backwash rate for every filter.

(f) Filter Media:

(1) Filter Sand. Filter sand shall be clean silica sand having:

(A) (1) an effective size of 0.35 mm to 0.55 mm,

(B) (2) a uniformity coefficient of not more than 1.70,

(C) (3) a dust content (passing 150 mesh tyler) less than 0.5 percent, and

- (D) (4) a depth of at least 24 inches and generally not more than 30 inches.
- (2) (g) Anthracite Filter Media. If anthracite coal is used as a single filter media, it shall have an effective size of 0.35 mm to 0.55 mm and a uniformity coefficient of 1.70 or less. Minimum depth of the media shall be 24 inches.
- (3) (h) Dual Media or Multi-media Filters. Dual media and mixed media filter beds may have a wider range of gradation than single media beds. Particle sizes may range from 0.15 mm to 1.2 mm within the beds. Influent water quality shall be considered in specifying particle sizes of mixed media beds. The minimum depth of the filter media should shall be 24 inches.
- (4) (g) Supporting Media and Underdrain System. The underdrain system and layers of gravel or other media supporting the filter media shall be designed to provide uniform filtration and uniform backwash throughout the filter media.
- (5) (h) Wash Water Troughs Elevation. The elevation of the bottom of the wash water troughs for new installations shall be above the maximum level of the expanded media during washing at the normal design wash water rate. The elevation of the top of the wash water troughs shall provide a two-inch freeboard above the expanded media at the maximum rate of wash.

.0710 OTHER WATER TREATMENT PLANTS

Water treatment plants which provide conventional filtration treatment, as defined in Rule .0102 of this Subchapter, but do not meet the minimum design criteria for process flow times established in this Rule, may be approved to treat high quality source waters under the following conditions:

- (1) A proposal shall be presented to the Department to justify deviation from minimum criteria. The proposal shall include an engineering report containing information and data to substantiate high source water quality characteristics and demonstrate water treatment plant effectiveness.
- (2) The flocculation process shall have a minimum of 20 minutes theoretical detention time.
- (3) The sedimentation compartment shall utilize tube settlers, plates or equivalent settling enhancement mechanisms and have a minimum of 30 minutes detention time.
- (4) The filter media shall be a minimum of 24 inches in depth and consist of dual or multi-media.
- (5) The source waters shall be derived from watersheds which are classified as WS-I, WS-II or WS-III and shall be protected from objectionable sources of pollution as determined by a sanitary survey in accordance with Rule .0202 of this Subchapter.
- (6) The following raw water quality standards shall apply:
 - (a) WS-I, WS-II or WS-III raw water quality standards established by the Environmental Management Commission shall be met.
 - (b) In addition to Sub-Item (6)(a) of this Rule, the following maximum concentration of turbidity, coliform, fecal coliform and color shall be allowed in the water plant influent water, based on sedimentation time provided by the water treatment plant. Off-stream pre-treatment to maintain these standards shall be provided as specified in Item (7) of this Rule.

SED TIME

4 hrs.

2 hrs.

1 hr.

½ hrs.

(k) (i) Turbidity Monitoring. Turbidimeters employing the nephelometric method, or measurement of the intensity of scattered light, should shall be provided for the continuous determination of the turbidities of filtered water from each filter unit.

(l) (j) Sampling Tap. A tap shall be installed for convenient sampling of the effluent from each filter.

(k) Multiple Filter Units. Two or more filter units shall be provided such that the annual average daily demand can be satisfied at the approved filtration rate with one filter removed from service.

(l) Structural Design. Filters shall have vertical walls with no protrusions or curvature. Floors of filter rooms shall be designed to prevent flooding or spillage into filters through provisions of overflow drainage and a minimum of four inch curbs around the filters.

(m) Filter to Waste. All filters shall have provisions for filtering to waste with backflow prevention.

(n) Filter Backwash. Backwash capacity to ensure thorough cleaning of the filters shall be provided.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

Turbidity (NTU)	150	75	50	25
Coliform/100 ml	3,000	2,000	1,000	500
Fecal coliform/100 ml	300	200	100	50
Color (CU)	75	60	40	20

Note: Uneven values are to be interpolated.

- (c) Maximum allowable fluctuations in turbidity, coliform, fecal coliform, color (up to the maximum of Sub-Item (6)(b) of this Rule, chemicals and other water quality characteristics shall be established by a pilot study conducted in accordance with Rule .0714 of this Section.
- (d) The allowable raw water concentration of all other contaminants, for which drinking water standards are established in this Subchapter, shall be based on the removal capacity of the water plant as demonstrated in a pilot study conducted in accordance with Rule .0714 of this Section.
- (7) Off-stream pre-treatment/storage reservoirs shall be provided to maintain the raw water quality standards of Item (6) of this Rule, equalize fluctuations and provide an unpolluted storage reserve in the event of contaminant spills as follows:
 - (a) Off-stream pre-treatment/storage reservoirs shall not be required for source waters derived from uninhabited watersheds classified WS-I if it is demonstrated that the raw water quality standards and fluctuations of Item (6) of this Rule are maintained in the water treatment plant influent water.
 - (b) Off-stream pre-treatment/storage shall not be required for source waters derived from Class I, II or III reservoirs on WS-I, WS-II or WS-III watersheds if an engineering report demonstrates to the Department the source is not vulnerable to spills and that the water quality standards and fluctuations of Item (6) of this Rule can be maintained in the water plant influent water.
 - (c) For all other source waters derived from WS-I, WS-II or WS-III watersheds, a minimum of five days off-stream pre-treatment/storage shall be provided. An engineering report as described in Item (1) of this Rule shall be submitted to demonstrate that five days storage is adequate or to determine the greater storage needed to maintain the raw water quality standards and fluctuations of Item (6) of this Rule in the water treatment plant influent water.
 - (d) When terrain or space constraints make it infeasible to construct a pre-treatment/storage reservoir, a mechanical pre-treatment system may be approved when an engineering report demonstrates to the Department that the source is not vulnerable to contaminant spills and that the raw water quality standards and fluctuations of Item (6) of this Rule can be maintained in the water treatment plant influent water.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0711 ALTERNATIVE FILTRATION TREATMENT TECHNOLOGIES

A public water system may propose an alternative filtration treatment technology as provided in Rule .2003 of this Subchapter. The following conditions shall apply:

- (1) The source waters shall be derived from WS-I, WS-II or WS-III watersheds and shall be protected from objectionable sources of pollution as determined from a sanitary survey in accordance with Rule .0202 of this Subchapter.
- (2) The raw water quality standards and fluctuations shall be as specified in Rule .0710 Item (6) of this Section, except that the following maximum concentrations shall be allowed in the influent water to the water treatment plant: Turbidity - 20 NTU, coliform - 500/100 ml, fecal coliform - 50/100 ml, color - 20 CU.

- (3) Off-stream pre-treatment/storage shall be provided as specified in Rule .0710 of this Section except that the raw water quality standards of Item (2) of this Rule shall be maintained in the water treatment plant influent water.
- (4) If the Department determines that the proposed water treatment plant employs treatment techniques that are consistent with this Subchapter, a pilot study shall be conducted in accordance with Rule .0714 of this Section.
- (5) If the pilot study demonstrates to the Department that the proposed water treatment plant can consistently produce water which complies with all requirements of this Subchapter, detailed engineering plans and specifications for the proposed plant and appurtenances shall be presented to the Department for re-

view and approval prior to construction or letting a contract.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0712 DIRECT FILTRATION

Water treatment plants which use direct filtration may be approved to treat high quality source waters derived from uninhibited watersheds classified WS-1. A proposal, including an engineering report as described in Rule .0710 Item (1) of this Section shall be submitted to the Department.

- (1) The following raw water maximum contaminant concentrations shall be met: Turbidity - 5 NTU, coliform - 500/100 ml, fecal coliform - 50/100 ml, color - 15 CU. Fluctuations shall not exceed 5 percent per hour.
- (2) A minimum of 5 days off-stream storage shall be provided except in cases where the source waters are derived from large in-stream impoundments and it is demonstrated that the raw water quality standards and fluctuations or Item (1) of this Rule are maintained at the entrance to the water treatment plant.
- (3) If the Department determines that the proposed water treatment plant provides treatment techniques that are consistent with this Subchapter and that the treatment is feasible for the source water, a pilot plant study shall be conducted in accordance with Rule .0714 of this Section.
- (4) If the pilot study demonstrates to the Department that the proposed plant can consistently produce water which complies with all requirements of this Subchapter, detailed engineering plans and specifications for the proposed plant and appurtenances shall be presented to the Department for review and approval prior to construction or letting a contract.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0713 PRESSURE FILTERS

Pressure filters shall not be used in treatment of surface waters. Pressure filters may be approved for treatment of existing groundwater sources under the influence of surface water under the following conditions:

- (1) Design standards for gravity filters in

Rule .0708 of this Section shall apply. Overall plant design shall comply with Rule .0404 of this Subchapter. Special design or operational features or modifications shall be provided when needed due to water quality or design of the proposed filter.

- (2) If the Department determines that the proposed water treatment plant employs treatment techniques that are consistent with this Subchapter, a pilot plant study shall be conducted in accordance with Rule .0714 of this Section.

If the pilot study demonstrates to the Department that the proposed plant can consistently produce water which complies with all requirements of this Subchapter, detailed engineering plans and specifications for the proposed plant and appurtenances shall be presented to the Department for review and approval prior to construction or letting a contract.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0714 PILOT PLANT STUDIES

(a) A pilot plant study proposal shall be submitted to the Department for approval before the study is conducted. The following conditions shall apply:

- (1) An engineering report shall describe the proposed study and shall include the information and data to justify use of the particular plant to treat the source water;
- (2) The proposed plant shall employ treatment techniques that are consistent with this Subchapter;
- (3) The pilot plant shall be of the same design and operation as the proposed plant;
- (4) A protocol for conducting the study shall be submitted which includes the duration, testing procedures, reporting procedures, plant scale and other factors which affect the proposed plant operation; and
- (5) The study shall be conducted over a time sufficient to treat all worst case source water conditions expected through the year.

(b) Pilot plant finished water shall not be introduced to a public water system unless approved by the Department.

(c) When the proposed plant or pilot plant has been tested extensively under worst case conditions on similar water and achieved 2.0 log removal of Giardia cysts and a maximum of 0.5 NTU turbidity levels 95 percent of the time in filtered effluent, the particular model plant may be proposed without on-site testing.

(d) The pilot plant shall comply with the provisions of Section .0200 of this Subchapter.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0715 OTHER DESIGN STANDARDS

In evaluation of water systems or water system design features not addressed in this Section, the Department shall consider standards from the American Water Works Association or Recommended Standards for Water Works of 10 states and Ontario. A copy is available for inspection at the Public Water Supply Section, 1330 St. Mary's Street, Raleigh, North Carolina.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

SECTION .0800 - HYDROPNEUMATIC STORAGE TANKS

.0802 CAPACITIES: DETERMINING PEAK DEMAND

There are charts available from the Plan Review Branch, Public Water Supply Section, Division of Environmental Health, which shall be used to determine the peak demand for residential communities, and mobile home parks, campgrounds, and non-transient, non-community water systems.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0803 CAPACITIES: DETERMINING TOTAL VOLUME

The total volume of the pressure tank shall be calculated by using the principle of Boyle's Law or by using the curves indicating air-water volume relationships available from the Plan Review Branch, Public Water Supply Section, Division of Environmental Health. The total volume (gallons) shall be not less than 25 times the number of connections or 500 gallons, whichever is greater for a mobile home park. In the case of a residential community (community water system) the total volume shall not be less than 40 times the number of connections or 500 gallons, whichever is great-

er. In the case of campgrounds, the total volume shall not be less than 10 times the number of connections or 500 gallons, whichever is greater.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0804 CAPACITIES: GROUND STORAGE PLUS HYDROPNEUMATIC TANKS

When ground level storage tanks and high-service pumps are to be used, hydropneumatic tanks shall be sized in relation to peak demand and the high-service pump capacity in accordance with the procedures outlined in .0801 to .0803 of this Section.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.0805 CAPACITIES: ELEVATED STORAGE

(a) Where feasible, elevated storage capacity should shall meet the requirements of Fire Insurance Rating Bureau.

(b) The minimum capacity of elevated storage in a small municipality should be 75,000 gallons or a one day supply, whichever is greater.

(c) (b) The elevated storage for a large municipality should shall be sufficient to minimize the effect of fluctuating demand plus provide a reasonable reserve for fire protection, but not be less than 75,000 gallons in capacity. The combined elevated and ground storage of finished water should be at least one day's supply.

(c) The combined elevated and ground storage of the finished water for community and non-transient, non-community water systems shall be a minimum of one-half day's supply of the average annual daily demand.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

SECTION .1000 - DISINFECTION OF WATER SUPPLY SYSTEMS

.1002 DISINFECTION OF WELLS

(a) After water supply wells have been cleaned of foreign substances, including sediment, grease and oil, the wells shall be disinfected by the addition of chlorine solution in concentrations sufficient to produce a minimum chlorine residual of at least 50 100 milligrams per liter (or ppm) in the entire water column within the well casing.

(b) The chlorine solution shall remain in the well for a period of 24 hours. Then the well

shall then be pumped until the water is free of chlorine.

(c) A representative sample or samples of the water shall be collected and analyzed by a certified laboratory. If bacteriological tests indicate that the water is satisfactory, the well may be placed in service.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

.1004 DISINFECTION OF FILTERS

(a) After filters have been thoroughly backwashed to remove dust, silt and other foreign matter the entire filter (including filter media, supporting material and underdrain system) shall be disinfected by application of a chlorine solution having a minimum concentration of ~~at least~~ 50 milligrams per liter (or ppm).

(b) The solution shall be dispersed throughout the filter bed and remain in contact for a ~~period of at least minimum~~ of 24 hours.

(c) For treatment equipment that cannot tolerate chlorine, alternate disinfection procedures as recommended by the equipment manufacturer shall be reviewed by the Department.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

SECTION .1100 - PROTECTION OF UNFILTERED PUBLIC WATER SUPPLIES

.1101 WATERSHED AREA

No dwelling house, pasture, hog lot, cattle or horse barn, or other areas where domestic animals are confined or permitted, and no parks, camping grounds or other places of public assembly shall be permitted within the watershed area of an unfiltered community public water system. The watershed area shall be posted in accordance with Rule .1107 of this Section.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

.1102 AUTHORIZED PERSONS WITHIN WATERSHED AREA

No persons, other than a duly authorized representative of the person or company supplying the water from an unfiltered community public water system or a representative of the local health department, or the Department, or a game warden, state forester or law enforcement officer, or a representative of the U.S. Park Service or U.S.

Forest Service shall be permitted within the area of the watershed of an unfiltered community public water system at any time and for any purpose except as may be allowed under special permission issued by the Department.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

.1105 PROHIBITED CONDUCT ON WATERSHED

No timbering, lumbering, construction, or reforestation operations shall be permitted on the watershed of an unfiltered community public water system unless the Department determines that the project will properly provide for the sanitary and physical protection of the water supply during such operations. The applicant shall submit a project plan describing the nature and scope of the project and precautions for protection of the water supply.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

.1107 WATERSHED BOUNDARY SIGNS

Signs advising the public of the watershed boundaries and prohibiting trespassing by all unauthorized persons shall be posted at the water works intake and along the boundaries and at entrances and accesses throughout the watershed area of an unfiltered community public water system. It shall be the duty of the watershed inspectors and other water supply officials to see that these signs are posted, replaced, and renewed when necessary.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

SECTION .1200 - PROTECTION OF FILTERED WATER SUPPLIES

.1201 RECREATIONAL ACTIVITIES

(a) No recreational activities shall be permitted on a class I or class II reservoir without a resolution by the commission or without approval by the Department. The Department may approve recreational events on a class I or class II reservoir which last one day or less upon a showing that the recreational event will not adversely affect the quality of the water to the point of rendering it unsatisfactory as a source for a community public water system. All other recreational activities on a class I or class II reservoir shall be permitted only upon a resolution by the commission authoriz-

ing the activity.

(b) Upon request for such a resolution, the Division shall make or cause to be made a thorough investigation of the quality of the water to determine the extent to which the proposed recreational activities would adversely affect the quality of the water. If, after such investigation, the Commission for Health Services is of the opinion that the proposed recreational activities will not adversely affect the quality of the water to the point of rendering it unsatisfactory as a source of community public water system, the Commission for Health Services may adopt a resolution authorizing the proposed recreational activities.

(c) Only those recreational activities specifically authorized in the resolution will be allowed. No recreational activities shall be permitted within 50 yards of any community public water system intake.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

.1203 MAINTENANCE OF PARKS

Parks or other places of resort for the use and entertainment of the public which may be established and maintained on a watershed shall be provided with sanitary facilities for the collection of garbage and disposal of sewage. Such facilities must, in the opinion of the Division, not cause deterioration of water quality and must meet requirements for approval by the Division of Environmental Health. Persons in charge of such facilities must maintain strict compliance with the Commission for Health Services' sanitation requirements at all times in order to prevent the pollution of the community public water system.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

.1207 ANIMALS IN RESERVOIR

The watering, washing or wallowing of any horses, mules, cattle, or domestic animals shall not be permitted in or along the margin of any class I or class II reservoir. Domestic or farm animals shall be restrained from access to an area within 50 feet of the reservoir at normal full level. The supplier of water may permit domestic animals within 50 feet of normal pool elevation if the animal is under direct supervision by a person and the activity is regulated by the supplier of water to ensure that water quality is not adversely affected.

Statutory Authority G.S. 130A-315; 130A-320;

P.L. 93-523.

.1209 UNTREATED DOMESTIC SEWAGE OR INDUSTRIAL WASTES

No treated or untreated domestic sewage, treated or untreated industrial waste or by-products shall be stored on the watershed of or discharged into any public water supply reservoir or stream tributary to that reservoir whose waters are classified as WS-I. No untreated domestic sewage or industrial waste by-products shall be discharged into any public water supply reservoir or stream classified as WS-II, or WS-III, WS-IV, or WS-V. No hazardous waste, industrial by-products, treated or untreated domestic sewage shall be stored in the watershed of a Class I or Class II water supply reservoir, without the approval of the Division. No hazardous waste or industrial by-products shall be stored in the watershed of a Class WS-II, or Class WS-III, WS-IV, or WS-V stream unless precautions are taken to prevent its being spilled into or otherwise entering the raw water supply. No wastewater treatment plant effluent shall be discharged into any public water supply reservoir or stream classified as WS-II, or WS-III, WS-IV, or WS-V without the approval of the Division.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

.1211 GROUND ABSORPTION SEWAGE COLLECTION: TREATMENT/DISP SYSTEMS

(a) No facility, including but not limited to a residence, mobile home, mobile home park, multi-unit building or dwelling, place of business or place of public assembly on a lot located on a watershed of a class I or class II reservoir or on the watershed of the portion of a stream classified as WS-I, WS-II, or WS-III, WS-IV, or WS-V extending from a class I reservoir to a downstream intake of a water purification plant shall use a ground absorption sewage disposal system unless all of the following criteria are met:

- (1) The lot includes at least 40,000 square feet or more, except as provided in Subparagraphs (a)(2) and (a)(3) of this Rule:
- (2) The lot shall include enough total area to equal an average of 40,000 square feet per residential dwelling unit for a multiple unit residential building or mobile home park;
- (3) The lot shall include enough total area to equal an average of 40,000 square

- feet for each business within a multiple unit place of business or place of public assembly;
- (4) The lot for any business or place of public assembly for which the anticipated wastewater generated exceeds 1250 gallons per day will require an additional 40,000 square feet of area ~~for~~ per each additional 1250 gallons per day or portion thereof. The anticipated wastewater generated shall be determined in accordance with 15A NCAC 18A .1949;
- (5) The lot size requirement shall be determined by excluding streets; and
- (6) Compliance with all other applicable state and local rules and laws is achieved.
- (b) The Director of the Division or his authorized representative, shall have authority, when special local factors permit or require it in order to protect the public health adequately and to ensure proper health and sanitary conditions, to increase the lot size requirements in particular cases upon a determination based on any of the following factors:

- (1) size of the reservoirs;
- (2) quantities and characteristics of the wastes;
- (3) type of business, use, or activity;
- (4) coverage of lot area by structures, parking lots and other improvements; and
- (5) type and location of the water supply.

(c) The requirements of this Rule do not apply to those portions of a water supply reservoir watershed which are drained by ~~class B or class C streams~~ waters classified other than for water supply use (WS-I, WS-II, WS-III, WS-IV, and WS-V). These requirements become effective whenever funds have been appropriated either for purchase of land or for construction of a class I or class II reservoir.

Statutory Authority G.S. 130A-315; 130A-320; P.L. 93-523.

SECTION .1300 - OPERATION OF PUBLIC WATER SUPPLIES

.1301 OPERATION REQUIRING DISINFECTION ONLY

(a) Operator in Charge. The operator in charge of a ~~community~~ public surface water system requiring disinfection shall be capable of comput-

ing chlorine dosages and other chemical dosages that may be applied to the water. The operator shall be familiar with the entire water system, including pipelines, chlorinators and other appurtenances pertaining to the operation of the entire system. The operator shall hold a valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board.

(b) Tests; Reports. The operator shall make adequate residual chlorine tests and other applicable tests at least daily and shall report the results of the tests to the Public Water Supply Section in a monthly report ~~which shall include pertinent information required on forms provided~~ by the Department. Copies of this report form indicating the required information may be obtained from the Public Water Supply Section. A copy of each monthly report shall be submitted by the tenth day of the following month to the Public Water Supply Section.

Statutory Authority G.S. 130A-315; 90A-29; P.L. 93-523.

.1302 OPERATION OF FILTERED PUBLIC WATER SYSTEMS

(a) Operator in Charge. The person in responsible charge of operation of a ~~community~~ public water system filtration plant where raw water is obtained from a class WS-I, WS-II, ~~or~~ WS-III, WS-IV, ~~or~~ WS-V stream as classified by the Division of ~~environmental management~~ Environmental Management and removal of dissolved matter or suspended matter is required shall hold an appropriate valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board.

(b) Tests; Forms. Adequate bacteriological and chemical tests and analysis of the water shall be made ~~at least~~ daily when the plant is operating and shall be reported to the Public Water Supply Section, in a monthly report ~~which shall include pertinent information required on forms provided~~ by the Department. Copies of report forms indicating the required information may be obtained from the Public Water Supply Section. A copy of each monthly report shall be submitted by the tenth day of the following month to the Public Water Supply Section.

(c) Operation. An operator shall be on duty at the treatment facility whenever the treatment facility is in operation.

Statutory Authority G.S. 130A-315; 90A-29; P.L. 93-523.

.1303 OPERATION OF PUBLIC WATER SYSTEM WELLS

(a) Operator in Charge. The operator of a community and non-transient, non-community water system well shall be capable of computing chlorine dosages and other chemical dosages which are applied to the water when such treatment is required. The operator shall be familiar with the entire water system, including pipelines, pumps, chlorinators, and other appurtenances pertaining to the operation of the entire water system. The operator shall hold a valid certificate issued by the North Carolina Water Treatment Facility Operators Certification Board.

(b) Tests; Forms. When application of chlorine and other chemicals are required, the operator shall make required residual chlorine tests and other tests at least daily and shall report his results to the Public Water Supply Section, in a monthly report which shall include pertinent information required on forms provided by the Division Department. Copies of this report form indicating the required information may be obtained from the Public Water Supply Section. A copy of each monthly report shall be submitted by the tenth day of the following month to the Public Water Supply Section.

Statutory Authority G.S. 130A-315; 90A-29; P.L. 93-523.

SECTION .1400 - FLUORIDATION OF PUBLIC WATER SUPPLIES

.1406 CONTROL OF TREATMENT PROCESS

(a) The treatment process shall result in the adjustment of fluoride ion (F) in the treated water to 1.0 mg/liter.

(b) A water treatment plant operator, having qualifications acceptable to the controlling health agencies, shall conduct the necessary chemical analyses and supervise application of the fluoride.

(c) An adequate number of samples shall be collected and analyzed from points before and after fluoridation and from one or more points in the distribution system. The minimum number of control tests and the number of check samples to be collected and submitted to the Division of Laboratory Services will be determined by the controlling health agencies in each instance.

(d) The fluoride content of the water shall be determined in accordance with either the procedure given in the latest edition of "Standard Methods for the Examination of Water and Wastewater"

which is adopted are incorporated by reference in accordance with G.S. 150B-14(e) including any subsequent amendments or editions or other procedures approved by the Secretary. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of one hundred sixty dollars (\$160.00).

(e) Accurate records of the amount of fluoride applied to the water and the results of all fluoride analyses shall be recorded on forms approved by the Department and submitted to the Department on or before the 15th day of the following month weekly.

(f) The quality of the fluoride chemical applied to the water shall be approved by the Department. The manufacturer shall submit a certified copy of the chemical analysis of the product offered for sale. Test for the purity of the chemical shall include the U.S. Pharmacopoeia tests for heavy metals which is adopted in accordance with G.S. 150B-14(e) are incorporated by reference including any subsequent amendments or editions.

Statutory Authority G.S. 130A-316.

SECTION .1500 - WATER QUALITY STANDARDS

.1507 CORROSION CONTROL AND LEAD AND COPPER MONITORING

(a) Control and adjustment of pH shall be provided for community water systems having water with a pH below 6.5; such control and adjustment to be approved by the Department. Most waters are corrosive in varying degrees at pH 6.5 and slightly above and such waters may have pH adjustment.

(b) The provisions of 40 C.F.R. 141.42 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$.30) per page for each

additional page.

(c) The provisions of 40 C.F.R. 141, Subpart I - Control of Lead and Copper are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$.30) per page for each additional page.

(d) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1508 INORGANIC CHEMICAL SAMPLING AND ANALYSIS

The provisions of 40 C.F.R. 141.23 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$.30) per page for each additional page. In addition, two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons shall conform to the following sampling schedule. A water supplier shall submit samples every three years from each section of the water system supplied from a separate source. Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same people more than six months per year shall monitor as specified for transient non-community water systems.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R.

141.

.1509 SPECIAL MONITORING FOR SODIUM

(a) Suppliers of water for community water systems shall collect and analyze one sample per plant at the entry point of the distribution system for the determination of sodium concentration levels. Samples must be collected and analyzed annually for systems utilizing surface water sources in whole or in part, and at least every three years for systems utilizing solely ground water sources. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with Department approval, be considered one treatment plant for determining the minimum number of samples. The supplier of water may be required by the Department to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(b) The supplier of water shall report to the Department the results of the analyses for sodium within the first 10 days of the month following the month in which the sample results were received or within the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is first. If more than annual sampling is required the supplier shall report the average sodium concentration within 10 days of the month following the month in which the analytical results of the last sample used for the annual average was received.

(c) The Department shall notify appropriate local health officials of the sodium levels found in community water systems.

(d) Analyses conducted to determine compliance with this Rule shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 141.41(d) which is are hereby adopted incorporated by reference in accordance with G.S. 150B-14(e) including any subsequent amendments and editions. A list of these methods is available from the Public Water Supply Section. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20

pages and thirty cents (\$0.30) per page for each additional page.

(e) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1511 CONCENTRATION OF IRON

(a) The requirements of this Rule apply only to community water systems. A community water system which has an iron concentration in excess of 0.30 mg/l shall provide approved treatment to control the water quality. Analysis of samples shall be made on an as needed basis determined by the Department. Such need basis shall include, but not be limited to, addition of a new well or other raw water source, approval of a new community water system, approval of an existing system not previously approved, or problems and complaints of water quality normally associated with iron concentration.

(b) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1512 CONCENTRATION OF MANGANESE

(a) The requirements of this Rule apply only to community water systems. A community water system which has a manganese concentration in excess of 0.05 mg/l shall provide approved treatment to control the water quality. Analysis of samples shall be made on an as needed basis determined by the Department. Such need basis shall include, but not be limited to, addition of a new well or other raw water source, approval of a new community water system, approval of an existing system not previously approved, or problems and complaints of water quality normally associated with manganese concentration.

(b) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

sions of this Rule.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1516 SPECIAL MONITORING FOR INORGANIC AND ORGANIC CHEMICALS

(a) The provisions of 40 C.F.R. 141.40 are hereby incorporated by reference including any subsequent amendments and editions, except that 40 C.F.R. 141.40(n)(10) is not adopted. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page.

(b) To comply with the monitoring requirements of this Rule a community water system or non-transient, non-community water system serving fewer than 150 service connections shall take a single water sample to be analyzed for inorganic and organic chemicals.

(c) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1519 MONITORING FREQUENCY FOR RADIOACTIVITY

(a) ~~Monitoring requirements for gross alpha particle activity, radium 226 and radium 228 in community systems:~~

(1) ~~Initial sampling to determine compliance with Rule .1520 shall begin within two years of the effective date of the National Primary Drinking Water Regulations (40 C.F.R. 141.26, eff. June 24, 1977) and the analysis shall be completed within three years of the effective date of the National Primary Drinking Water Regulations (40 C.F.R. 141.26, eff. June 24, 1977). Compliance shall be based on the analysis of an annual composite of four consecutive~~

- quarterly samples or the average of the analyses of four samples obtained at quarterly intervals:
- (A) A gross alpha particle activity measurement may be substituted for the required radium 226 and radium 228 analysis, provided that the measured gross alpha particle activity does not exceed 5 pCi/l at a confidence level of .95 percent (1.65^* where * is the standard deviation of the net counting rate of the sample). In localities where radium 228 may be present in drinking water, the Department may require radium 226 and/or radium 228 analyses when the gross alpha particle activity exceeds 2 pCi/l.
- (B) When the gross alpha particle activity exceeds 5 pCi/l, the same or an equivalent sample shall be analyzed for radium 226. If the concentration of radium 226 exceeds 3 pCi/l the same or an equivalent sample shall be analyzed for radium 228.
- (2) Suppliers of water shall monitor at least once every four years following the procedure required by (a)(1) of this Rule. At the discretion of the Secretary, when an annual record taken in conformance with (a)(1) of this Rule has established that the average annual concentration is less than half the maximum contaminant levels established by .1520 of this Section, analysis of a single sample may be substituted for the quarterly sampling procedure required by (a)(1) of this Rule:
- (A) More frequent monitoring shall be conducted when ordered by the Department in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water;
- (B) A supplier of water shall monitor in conformance with (a)(1) of this Rule within one year of the introduction of a new water source for a community water system. More frequent monitoring shall be conducted when ordered by the Department in the event of possible contamination or when changes in the distribution system or treatment processing occur which may increase the concentration of radion-
- tivity in finished water;
- (C) A community water system using two or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free flowing tap, when ordered by the Department;
- (D) Monitoring for compliance with .1520 of this Section after the initial period need not include radium 228 except when required by the Department, provided that the average annual concentration of radium 228 has been assayed at least once using the quarterly sampling procedure required by (a)(1) of this Rule;
- (E) Suppliers of water shall conduct annual monitoring of any community water system in which the radium 226 concentration exceeds 3 pCi/l, when ordered by the Secretary.
- (3) If the average annual maximum contaminant level for gross alpha particle activity or total radium as set forth in .1520 of this Section is exceeded, the supplier of a community water system shall give notice to the Department pursuant to .1525 of this Section and notify the public as required by Rule .1523 of this Section. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.
- (b) Monitoring requirements for man-made radioactivity in community water systems:
- (1) Within two years of the effective date of the National Primary Drinking Water Regulations (40 C.F.R. 141.26, eff. June 24, 1977), systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the Secretary shall be monitored for compliance with .1521 of this Section by analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. Compliance with .1521 of this Section may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50

pCi/l and if the average annual concentrations of tritium and strontium 90 are less than those listed in Table A in .1521 of this Section provided that if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year;

- (A) If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with .1521 of this Section;
- (B) Suppliers of water shall conduct additional monitoring, as ordered by the Secretary, to determine the concentration of man-made radioactivity in principal watersheds designated by the Department;
- (C) At the discretion of the Secretary, suppliers of water utilizing only ground waters may be required to monitor for man-made radioactivity.
- (2) After the initial analysis required by (b)(1) of this Rule, suppliers of water shall monitor at least every four years following the procedure given in (b)(1) of this Rule;
- (3) Within two years of the effective date of the National Primary Drinking Water Regulations (40 C.F.R. 141.26, eff. June 24, 1977) the supplier of any community water system designated by the Secretary as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle iodine 131 radioactivity and annual monitoring for strontium 90 and tritium:
 - (A) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds 15 pCi/l, the same or an equivalent sample shall be analyzed for strontium 89 and cesium 134. If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with .1521 of this Section;
 - (B) For iodine 131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the Secretary, more frequent monitoring shall be conducted when iodine 131 is identified in finished water;
 - (C) Annual monitoring for strontium 90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended;
 - (D) The Secretary may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of a man-made radioactivity by the supplier of water where the Secretary determines such data is applicable to a particular community water system.
- (4) If the average annual maximum contaminant level for man-made radioactivity set forth in .1521 of this Section is exceeded, the operator of a community water system shall give notice to the Department pursuant to Rule .1525 of this Section and to the public as required by Rule .1523 of this Section. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.
 - (a) The provisions of 40 C.F.R. 141.26 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$.30) per page for each additional page.
 - (e) (b) An adjacent water system shall conform to the following sampling schedule rather than the

schedule set forth in Paragraphs (a) and (b) of this Rule. A water supplier shall take samples for gross alpha particle activity, radium-226 and radium-228, and for man-made radioactivity from the water system when the Secretary determines that the system is in an area subject to radiological contamination. When the sampling is required, a water supplier shall submit samples every four years from each section of the water system supplied from a separate source.

(c) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall monitor the same as required by adjacent systems in Paragraph (b) of this Rule.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1520 MAXIMUM CONTAMINANT LEVELS FOR RADIUM

The following are the maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity in community water systems:

- (1) combined radium-226 and radium-228 5 pCi/l;
- (2) gross alpha particle activity (including radium-226 but excluding radon and uranium) 15 pCi/l.

The provisions of 40 C.F.R. 141.15 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1521 MAXIMUM CONTAMINANT LEVELS FOR MAN-MADE RADIONUCLIDES

(a) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in community water systems shall not produce an annual dose equivalent to the total body or any internal organ greater than four

millirem/year.

(b) Except for the radionuclides listed in Table A, the concentration of man-made radionuclides causing four rem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168-hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure" NBS HANDBOOK 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year.

TABLE A

Average annual concentrations assumed to produce a total body or organ dose of 4 mrem/yr.

<u>Radionuclide</u>	<u>Critical Organ</u>	<u>pCi per liter</u>
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

The provisions of 40 C.F.R. 141.16 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars (\$15.00) up to 20 pages and thirty cents (\$0.30) per page for each additional page.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1533 TOTAL TRIHALOMETHANES SAMPLING AND ANALYSIS: LESS THAN 10,000

(a) Community and non-transient non-community water systems which serve a population of less than 10,000 individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes (TTHMs) in accordance with this Rule. Analysis shall begin not later than the quarter beginning January 1,

1992. For the purpose of this Rule, the minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with Department approval, be considered one treatment plant for determining the minimum number of samples. All samples taken within an established frequency shall be collected within a 24 hour period.

(b) For all community and non-transient non-community water systems utilizing surface water sources in whole or in part, and for all community and non-transient non-community water systems utilizing only ground water sources, analyses for TTHMs shall be made as follows:

- (1) Analyses shall be performed at quarterly intervals on at least one water sample taken at a location within the distribution system reflecting the maximum residence time of the water in the system. The results of all analyses per quarter shall be reported to the Department within 30 days of the system's receipt of such results. If more than one analysis is performed, the results of all the analyses shall be arithmetically averaged. All samples collected shall be used in the computation of the average, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in Paragraph (d) of this Rule.
- (2) Upon a written determination by the Department that the data from at least one year or more of monitoring from a community water system or a non-transient non-community water system in accordance with Subparagraph (b)(1) of this Rule and that local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level, the monitoring frequency required by Subparagraph (b)(1) of this Rule may be reduced by the Department to a minimum of one sample analyzed for TTHMs per year taken at a point in the distribution system reflecting the maximum residence time of the water in the system.
- (3) If at any time during which the reduced monitoring frequency prescribed under this Paragraph applies, the results from

any analysis exceed 0.10 mg/l of TTHMs and such results are confirmed by at least one check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring at a quarterly frequency of at least one water sample per treatment plant after disinfection and a sample from the distribution system reflecting the maximum residence time of the water in the system. This level of monitoring shall continue for at least one year before the frequency may be reduced again. The Department may require a system's monitoring frequency to be increased above the minimum in those cases where it is necessary to detect variations of TTHM levels within the distribution system.

(c) Compliance with 15A NCAC 18C .1517 shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in Subparagraph (b)(1) of this Rule. If the average of samples covering any 12 month period exceeds the maximum contaminant level, the supplier of water shall report to the Department pursuant to 15A NCAC 18C .1525 and notify the public pursuant to 15A NCAC 18C .1523. Monitoring after public notification shall be at a frequency designated by the Department and shall continue until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(d) Sampling and analyses made pursuant to this Section shall be conducted by one of the following EPA approved methods:

- (1) "The Analysis of Trihalomethanes in Drinking Waters by the Purge and Trap Method," Method 501.1, Environmental Monitoring and Support Laboratory, EPA Cincinnati, Ohio.
- (2) "The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2, Environmental Monitoring and Support Laboratory, EPA Cincinnati, Ohio.

Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes, according to the procedures described in the methods in (1) and (2) of this Subparagraph Paragraph. Samples for maximum TTHM potential should not be dechlorinated, and

shall be held for seven days at 25° C or above prior to analysis, according to the procedures described in the methods in (1) and (2) of this Subparagraph Paragraph.

(e) Before a community water system makes any significant modifications to its existing treatment process for the purposes of achieving compliance with 15A NCAC 18C .1517(3), such system must submit and obtain Department approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the Department approved plan. At a minimum, a Department approved plan shall require the system modifying its disinfection practice to:

- (1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;
- (2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system;
- (3) Provide baseline water quality survey data of the distribution system. Such data shall include the results from monitoring for coliform and fecal coliform bacteria, fecal streptococci, standard plate counts at 35° C and 20° C, phosphate, ammonia nitrogen and total organic carbon. Virus studies shall be required where source waters are heavily contaminated with sewage effluent;
- (4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water, for example, when chloramines are introduced as disinfectants or when pre-chlorination is being discontinued. Additional monitoring shall also be required by the Department for chloride, chlorite and chlorine dioxide when chlorine dioxide is used as a disinfectant. Standard plate count analyses shall also be required by the Department as appropriate before and after any modifications;
- (5) Consider inclusion in the plan of provisions to maintain an active disinfectant residual throughout the distribution system at all times during and after the modification.

(f) The maximum contaminant levels for trihalomethanes set forth in 15A NCAC 18C .1517 for a community water system or a non-transient non-community water system serving less than 10,000 individuals shall take effect one year from the date that the system begins quarterly sampling.

(g) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

Statutory Authority G.S. 130A-315.

.1537 DRINKING WATER ADDITIVES

(a) The standards set forth in American National Standards Institute/NSF International, codified at ANSI/NSF Standard 60 and ANSI/NSF Standard 61, are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Copies of ANSI/NSF 60: Drinking Water Treatment Chemicals - Health Effects or ANSI/NSF 61: Drinking Water System Components - Health Effects may be obtained at a cost of forty-five dollars (\$45.00) each from NSF International, P. O. Box 130140, Ann Arbor, Michigan 48113-0140.

(b) A water supply product used in a public water system shall meet the standards incorporated by reference in Paragraph (a) of this Rule. A product certified by an organization having a third-party certification program accredited by the American National Standards Institute to test and certify such products is acceptable for use in a public water system.

(c) A supplier of water shall maintain a list of all water supply products used in a public water system for inspection by the Department. Prior to using a product not previously listed, a supplier of water shall either determine the product is certified as required by Paragraph (b) of this Rule or notify the Department of the type, name and manufacturer of a product.

(d) A supplier of water shall not willfully introduce or permit the introduction of a water supply product into a public water system which does not meet the requirements of this Rule.

Statutory Authority G.S. 103A-315; P.L. 93-523.

* * * * *

WITH G.S. 150B-21.2(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 19A .0206.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 1:30 p.m. on April 7, 1994 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To add "optometrist" to the "health care provider" list in Subparagraph (a)(1).

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by April 14, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY

**CHAPTER 19 - HEALTH:
EPIDEMIOLOGY**

**SUBCHAPTER 19A - COMMUNICABLE
DISEASE CONTROL**

**SECTION .0200 - CONTROL MEASURES
FOR COMMUNICABLE DISEASES**

**.0206 INFECTION CONTROL - HEALTH
CARE SETTINGS**

(a) The following definitions shall apply throughout this Rule:

(1) "Health care organization" means hospital; clinic; physician, dentist, podiatrist, optometrist, or chiropractic office; home health agency; nursing home; local health department; community health center; mental health agency; hospice; ambulatory surgical center; urgent care center; emergency room; or any other health care provider that provides clinical care.

(2) "Invasive procedure" means entry into tissues, cavities, or organs or repair of traumatic injuries. The term includes but is not limited to the use of needles to puncture skin, vaginal and cesarean deliveries, surgery, and dental procedures during which bleeding occurs or the potential for bleeding exists.

(b) Health care workers, emergency responders, and funeral service personnel shall follow blood and body fluid precautions with all patients.

(c) Health care workers who have exudative lesions or weeping dermatitis shall refrain from handling patient care equipment and devices used in performing invasive procedures and from all direct patient care that involves the potential for contact of the patient, equipment, or devices with the lesion or dermatitis until the condition resolves.

(d) All equipment used to puncture skin, mucous membranes, or other tissues in medical, dental, or other settings must be disposed of in accordance with 15A NCAC 13B after use or sterilized prior to reuse.

(e) In order to prevent transmission of HIV and hepatitis B from health care workers to patients, each health care organization that performs invasive procedures shall implement a written infection control policy by July 1, 1993. The health care organization shall ensure that health care workers

in its employ or who have staff privileges are trained in the principles of infection control and the practices required by the policy; require and monitor compliance with the policy; and update the policy as needed to prevent transmission of HIV and hepatitis B from health care workers to patients. The health care organization shall designate a staff member to direct these activities. By September 1, 1994 the designated staff member in each health care organization shall have successfully completed a course in infection control approved by the Department. The course shall address:

- (1) Epidemiologic principles of infectious disease;
 - (2) Principles and practice of asepsis;
 - (3) Sterilization, disinfection, and sanitation;
 - (4) Universal blood and body fluid precautions;
 - (5) Engineering controls to reduce the risk of sharp injuries;
 - (6) Disposal of sharps; and
 - (7) Techniques which reduce the risk of sharp injuries to health care workers.
- (f) The infection control policy required by this Rule shall address the following components that are necessary to prevent transmission of HIV and hepatitis B from infected health care workers to patients:

- (1) Sterilization and disinfection, including a schedule for maintenance and microbiologic monitoring of equipment; the policy shall require documentation of maintenance and monitoring;
- (2) Sanitation of rooms and equipment, including cleaning procedures, agents, and schedules;
- (3) Accessibility of infection control devices and supplies;
- (4) Procedures to be followed in implementing 15A NCAC 19A .0202(4) and .0203(b)(3) when a health care provider or a patient has an exposure to blood or other body fluids of another person in a manner that poses a significant risk of transmission of HIV or hepatitis B.

Statutory Authority G.S. 130A-144; 130A-145.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S.

150B-21.2 that the North Carolina Real Estate Commission intends to amend rules cited as 21 NCAC 58A .0104 and .0112.

T*he proposed effective date of this action is January 1, 1995.*

T*he public hearing will be conducted at 9:00 a.m. on April 14, 1994 at the Jane S. McKimmon Center, Corner Gorman Street and Western Blvd., Raleigh, N.C.*

R*eason for Proposed Action: To codify a real estate licensee's duty to disclose his agency relationship to parties to a transaction.*

C*omment Procedures: Comments regarding these rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.*

CHAPTER 58 - REAL ESTATE COMMISSION

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

.0104 AGENCY CONTRACTS AND DISCLOSURE

(a) Every written listing contract, and buyer brokerage agency contract or other contract for brokerage services in a real estate sales transaction shall be in writing, shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period. ~~It shall not require an owner to notify a broker of the owner's intention to terminate the listing contract, nor shall it require a buyer to notify a broker of the buyer's intention to terminate the brokerage contract.~~

(b) Every written listing contract, and buyer brokerage agency contract or other contract for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race,

color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the contract.

(c) Every listing contract, buyer agency contract or other contract for brokerage services in a real estate sales transaction shall incorporate a description of agent duties and relationships prescribed by the Commission which shall be set forth in a clear and conspicuous manner and shall not include or be accompanied by any additional text which contradicts its meaning and substance. Immediately after the description of agent duties and relationships, every listing and buyer agency contract shall contain the following provision, including a box which the agent shall check when the provision is applicable: "□ CAUTION: This firm represents both seller and buyers. This means that it is possible that a buyer we represent will want to purchase a property owned by a seller we represent. When that occurs, the agent and firm listed above will act as dual agents if all parties agree."

(d) A broker or brokerage firm representing one party in a transaction shall not undertake to represent another party in the transaction without the express, written authority of each party.

(e) In every real estate sales transaction, a broker or salesman working directly with a prospective buyer as a seller's agent or subagent shall disclose to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesman represents the interests of the seller. The broker or salesman shall make the disclosure on the "Disclosure to Buyer from Seller's Agent or Subagent" form prescribed by the Commission.

(f) In every real estate sales transaction, a broker or salesman representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesman represents the buyer's interests. In addition, the broker or salesman shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

Statutory Authority G.S. 93A-3(c).

.0112 OFFERS AND SALES CONTRACTS

(a) A broker or salesman acting as an agent in

a real estate transaction shall not use a preprinted offer or sales contract form unless the form adequately describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0107 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, loan commitment date, and who shall pay loan closing costs; and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;

- (11) the date for closing and transfer of possession;
- (12) the signatures of the buyer and seller;
- (13) the date of offer and acceptance;
- (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer, or a provision otherwise describing the estate to be conveyed, and encumbrances, and the form of conveyance;
- (15) the items to be prorated or adjusted at closing;
- (16) who shall pay closing expenses;
- (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any; and
- (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing; and
- (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents.

The provisions of this rule shall apply only to preprinted offer and sales contract forms which a broker or salesman acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract; nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

(b) A broker or salesman acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing the provisions or terms listed in Subparagraphs (b)(1) and (2) of this Rule. A broker, salesman or anyone acting for or at the direction of the broker or salesman shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys:

- (1) any provision concerning the payment of a commission or compensation,

- (2) including the forfeiture of earnest money, to any broker, salesman or firm; or any provision that attempts to disclaim the liability of a broker or salesman for his representations in connection with the transaction.

Statutory Authority G.S. 93A-3(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to amend rules cited as 21 NCAC 58A .0110, .0502 - .0505; 58C .0101 - .0105, .0107, .0202 - .0204, .0214, .0218, .0301 - .0303, .0305 and .0309; repeal 58C .0308, .0401 - .0407; 58D .0101 - .0102, .0201 - .0210, .0301 - .0306, .0401 - .0409, .0501, .0601 - .0606 and .0701; adopt 58A .1701 - .1711; 58E .0101 - .0105, .0201 - .0206, .0301 - .0309, .0401 - .0412, and .0501 - .0514.

The proposed effective date of this action is July 1, 1994.

The public hearing will be conducted at 9:00 a.m. on April 14, 1994 at the Jane S. McKimmon Center, Corner Gorman Street and Western Blvd., Raleigh, N.C.

Reason for Proposed Action:

21 NCAC 58A .0110, .0502 - .0505 - To bring rules regarding broker-in-charge, corporations, license renewal, license activation and license reinstatement into compliance with requirements concerning continuing education.

21 NCAC 58A .1701 - .1711 - To codify requirements and procedures concerning continuing education for real estate brokers and salesmen.

21 NCAC 58C .0101 - .0105, .0107, .0202 - .0204, .0214, .0218, .0301 - .0303, .0305, .0308, .0309, .0401 - .0407 - To delete from the Commission's rules all references to real estate appraiser education.

21 NCAC 58D .0101 - .0102, .0201 - .0210, .0301 - .0306, .0401 - .0409, .0501, .0601 - .0606 and .0701 - To repeal all rules regarding Commission's authority to regulate licensed or certified real estate appraisers.

21 NCAC 58E .0101 - .0105, .0201 - .0206, .0301 - .0309, .0401 - .0412 and .0501 - .0514 -

To codify procedures and standards for the real estate continuing education program.

Comment Procedures: Comments regarding these rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.

CHAPTER 58 - REAL ESTATE COMMISSION

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

.0110 BROKER-IN-CHARGE

(a) There shall be designated for each firm and branch office thereof one broker who shall assume responsibility at such office for:

- (1) the proper display of license certificates of the brokers and salesmen associated with or engaged on behalf of the firm at such office, ascertaining whether each licensee employed at the office has complied with Rules .0503 and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office;
- (6) the proper supervision of salesmen associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter; and
- (7) the verification to the Commission of the experience of any salesman at such office who may be applying for licensure as a broker.

No broker shall be broker-in-charge of more than one office or branch office.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business;
- (2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) A broker-in-charge must continually maintain his license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his status as broker-in-charge within 10 days following the change. Within 10 days following termination of his supervisory responsibilities over any salesman, the broker-in-charge shall provide the salesman, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased or rented for others by the salesman while under the supervision of the broker-in-charge.

Statutory Authority G.S. 93A-3(c).

SECTION .0500 - LICENSING

.0502 CORPORATIONS

(a) Application forms for corporations required to be licensed as brokers shall be available upon request to the Commission and call for such information as the corporate name, the address of its principal office, a copy of its corporate charter evidencing its authority to engage in the business of real estate brokerage, past conviction of criminal offenses of any corporate director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class, information concerning the past revocation, suspension or denial of a business or professional license to any director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class, a list of all directors and officers of the corporation, a list of all persons, partnerships, corporations or other entities owning ten percent or more of the outstanding shares of any class, and a list of all brokers and salesmen associated with the corporation.

(b) A foreign corporation shall further qualify by filing with its application for license a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State in accordance with G.S. 55-131 and a con-

sent to service of process and pleadings which shall be authenticated by its corporate seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute said consent.

(c) After filing a written application with the Commission and upon a showing that at least one executive officer of said corporation holds a ~~current~~ broker's license on active status and in good standing and will serve as principal broker of the corporation, the corporation will be licensed provided it appears that the applicant corporation employs and is directed by personnel possessed of the requisite truthfulness, honesty and integrity.

(d) The licensing of a corporation shall not be construed to extend to the licensing of its officers and employees in their individual capacities regardless of whether they are engaged in furthering the business of the licensed corporation.

(e) The principal broker of a corporation shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the corporation at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the corporation;
- (3) the proper display of the real estate license certificate of the corporation at the principal office of the corporation at which real estate brokerage activities are conducted and a photocopy of such license at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the corporation and the registration of any assumed business name adopted by the corporation for its use; and
- (5) notifying the Commission in writing of any change of his status as principal broker within ten days following the change.

Statutory Authority G.S. 93A-3(c); 93A-4(a),(b),(d).

.0503 LICENSE RENEWAL; OPERATING WHILE LICENSE EXPIRED

(a) Any licensee desiring the renewal of a license shall, during the month of June, apply for same in writing upon a form approved by the Commission and shall forward the required fee of twenty-five dollars (\$25.00). Forms are available

~~upon request to the Commission. All real estate broker, salesman or corporate broker licenses issued by the Commission under Article 1, Chapter 93A of the General Statutes shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of twenty-five dollars (\$25.00).~~

(b) Beginning in 1995, any person desiring to renew his license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter.

(d) Any person or corporation which engages in the business of a real estate broker or salesman while his or its license is lapsed expired will be subject to the penalties prescribed in the license law.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; 93A-6.

.0504 ACTIVE AND INACTIVE LICENSE STATUS

(a) ~~A broker, salesman or corporate broker shall be assigned by the Commission to inactive status upon written request to the Commission. A salesman shall be assigned to inactive status upon initial licensure and when he is not under the active, personal supervision of a broker in charge. A corporate broker shall be assigned to inactive status when the corporation does not have a principal broker. Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license and may not be compensated for the~~

provision of any real estate brokerage service, including compensation for the referral of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of Chapter 93A of the General Statutes of North Carolina or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) A salesman on inactive status shall be assigned to active status upon written receipt by the Commission of the form prescribed in Rule .0506(b) of this Subchapter. A broker on inactive status shall be returned to active status upon making a written request to the Commission. A corporate broker on inactive status shall be returned to active status when it certifies to the Commission that a principal broker has been designated or upon reinstatement of the license of a former principal broker. As a condition for assigning or returning a licensee to active status, the Commission may, in its discretion, require the licensee to satisfy the requirements of an applicant for original licensure if the licensee has been on inactive status for three or more years. Upon initial licensure, a salesman's license shall be assigned by the Commission to inactive status and the license of a broker or corporate broker shall be assigned to active status. The license of a broker, salesman or corporate broker shall be assigned by the Commission to inactive status upon the written request of the licensee. A salesman's license shall be assigned by the Commission to inactive status by the Commission when the salesman is not under the active, personal supervision of a broker-in-charge. A corporate broker's license shall be assigned by the Commission to inactive status when the corporation does not have a principal broker. A broker or salesman shall also be assigned to inactive status if, upon the second renewal of his license following initial licensure, or upon any subsequent renewal, he has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A licensee on inactive status shall not be entitled to act in any capacity for which a license is required; however, the licensee must renew his license and pay the prescribed license renewal fee in order to continue to hold a license. A salesman's inactive license shall be assigned to active

status upon receipt by the Commission of the properly completed form prescribed in Rule .0506(b) of this Section, upon presentation of evidence that he has obtained any continuing education that may be required by Rule .1703 of this Subchapter, and upon submission of an affidavit, on a form prescribed by the Commission, describing any involvement in real estate brokerage the salesman may have had while his license was inactive. A broker's inactive license shall be assigned to active status upon the written request of the broker on a form prescribed by the Commission, upon presentation of evidence that he has obtained any continuing education that may be required by Rule .1703 of this Subchapter, and upon submission of an affidavit, on a form prescribed by the Commission, describing any involvement in real estate brokerage the broker may have had while his license was inactive. A corporate broker's inactive license shall be assigned to active status upon designation in writing of a principal broker or upon reinstatement of the expired license of the last designated principal broker and upon submission by the principal broker of an affidavit, on a form prescribed by the Commission, describing any involvement in real estate brokerage the corporation may have had while its license was inactive.

(d) The Commission may take disciplinary action against a licensee on inactive status.

Statutory Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6.

.0505 REINSTATEMENT OF EXPIRED LICENSE

Expired licenses may be reinstated within 12 months after expiration upon proper application and payment of the twenty-five dollar (\$25.00) renewal fee plus five dollar (\$5.00) late filing fee. Licenses expired for more than 12 months may be considered for reinstatement upon proper application and payment of thirty dollar (\$30.00) fee for brokers and thirty dollar (\$30.00) fee for salesmen. Such applications will be reviewed by the Commission to determine whether an examination and/or real estate education will be required.

(a) Licenses expired for not more than 12 months may be reinstated upon proper application and payment of the twenty-five dollar (\$25.00) renewal fee plus five dollar (\$5.00) late filing fee. In order to reinstate such license on active status for a license period beginning on or after July 1, 1995, the applicant shall also present evidence satisfactory to the Commission of having obtained

such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status, except that the time during which the license was expired shall also count as inactive time for the purpose of determining the amount of continuing education elective credit hours required. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter and the time during which the license was expired shall also count as inactive time for the purpose of determining the amount of continuing education elective credit hours required.

(b) Reinstatement of licenses expired for more than 12 months may be considered upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence necessary to function in the real estate business in a manner that protects and serves the public interest. In this regard, the Commission may require such applicants to complete real estate education and/or pass the license examination.

Statutory Authority G.S. 93A-3(c); 93A-4(c), (d); 93A-4A.

SECTION .1700 - MANDATORY CONTINUING EDUCATION

.1701 PURPOSE AND APPLICABILITY

This Section describes the continuing education requirement for real estate brokers and salesmen authorized by G.S. 93A-4A, establishes the continuing education requirement to change a license from inactive status to active status, establishes attendance requirements for continuing education courses, establishes the criteria and procedures relating to obtaining an extension of time to complete the continuing education requirement, establishes the criteria for obtaining continuing education credit for an unapproved course or related educational activity, and addresses other similar matters.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1702 CONTINUING EDUCATION REQUIREMENT

(a) In order to renew a broker or salesman

license on active status for a license period beginning on or after July 1, 1995, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses covering acceptable subject matter as described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission.

(b) No continuing education shall be required to renew a broker or salesman license on inactive status; however, to change a license from inactive status to active status, the licensee must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a licensee who is a member of the North Carolina General Assembly to renew his license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. The term "initial licensure" means the first time that a license of a particular type is issued to a person. Thus, issuance of a broker license to a person previously licensed as a salesman is considered to be initial licensure; however, reinstatement of an expired, revoked or suspended license does not constitute initial licensure.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1703 CONTINUING EDUCATION FOR LICENSE ACTIVATION

(a) On and after July 1, 1995, a broker or salesman requesting to change an inactive license to active status on or after the licensee's second license renewal following his initial licensure shall be required to demonstrate completion of continuing education as described in this Rule. The licensee must have completed, since the beginning of the license period immediately preceding the date of request for license activation, both a mandatory update course and a number of hours in approved elective courses to be determined according to Paragraph (b) or (c) of this Rule, whichever

is appropriate.

(b) If the mandatory update course was completed during the immediate preceding license period, the licensee must also have obtained, since the beginning of the immediate preceding license period, four credit hours in approved elective courses for each license period or portion thereof that the license has been continuously inactive, up to a maximum of 12 hours. None of the elective course credit hours obtained to satisfy this requirement may be credited toward the continuing education requirement for the current license period.

(c) If the mandatory update course was completed during the current license period, the licensee must also have obtained, since the beginning of the immediate preceding license period, four credit hours in approved elective courses for each license period or portion thereof that the license has been continuously inactive, up to a maximum of 16 hours, provided that the minimum number of elective course credit hours required since the beginning of the immediate preceding license period shall be eight hours. None of these elective course credit hours may be credited toward the continuing education requirement for the current license period; however, the update course credit hours will be credited toward the continuing education requirement for the current license period.

(d) For the purpose of satisfying the elective course credit hour requirement described in Paragraphs (b) and (c) of this Rule, the maximum number of credit hours that will be awarded for any single course is four hours.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1704 NO CREDIT FOR PRELICENSING COURSES

No credit toward the continuing education requirement will be awarded for completing a real estate prelicensing course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1705 ATTENDANCE AND PARTICIPATION REQUIREMENTS

In order to receive any credit for completing an approved continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course, and must comply with student participation standards described in Rule .0511 of Subchapter 58E. No credit will be awarded for

attending less than 90 percent of the scheduled classroom hours.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1706 REPETITION OF COURSES

A continuing education course may be taken only once for continuing education credit within a single license period.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1707 ELECTIVE COURSE CARRY-OVER CREDIT

If a licensee fully satisfies the continuing education elective requirement for a particular license period and then takes an additional approved continuing education elective course(s) in that same license period, the creditable hours taken in the additional course(s) may be applied toward satisfaction of the continuing education elective requirement for the next succeeding license period. However, if a continuing education elective course is used to wholly or partially satisfy the elective requirement for a particular license period, then any excess hours completed in such course which are not needed to satisfy the four-hour elective requirement for that license period may not be carried forward and applied toward the elective requirement for the next succeeding license period.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1708 EQUIVALENT CREDIT

(a) A licensee may request that the Commission award continuing education credit for a course taken by the licensee that is not approved by the Commission, or for some other real estate education activity, by making such request on a form prescribed by the Commission and submitting a nonrefundable fee of fifty dollars (\$50.00) for each request for evaluation of a course or real estate education activity. Such requests and all supporting documents, with the exception of applications from instructors of continuing education courses desiring equivalent credit for teaching Commission-approved continuing education courses, must be received by the Commission at least 60 days prior to the expiration of the licensee's current license.

(b) The Commission may award continuing education elective credit for satisfactory completion of an unapproved course which the Commission finds equivalent to the elective course component of the continuing education requirement set

forth in Section .0300 of Subchapter 58E. Completion of an unapproved course may serve only to satisfy the elective requirement and cannot be substituted for completion of the mandatory update course.

(c) Real estate education activities, other than teaching a Commission-approved course, which may be eligible for credit include, but are not limited to: developing a Commission-approved elective continuing education course, authorship of a published real estate textbook; and authorship of a scholarly article, on a topic acceptable for continuing education purposes, which has been published in a professional journal. Each activity for which continuing education credit is requested must have been completed within the current license period. The Commission may award continuing education elective credit for activities which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. No activity other than teaching a Commission-developed mandatory update course shall be considered equivalent to completing the mandatory update course.

(d) The Commission may award credit for teaching the Commission-developed mandatory update course and for teaching an approved elective course. Credit for teaching an approved elective course shall be awarded only for the license period in which the instructor teaches the course for the first time. Credit for teaching a Commission-developed mandatory update course may be awarded for each licensing period in which the instructor teaches the course. The amount of credit awarded to the instructor of an approved continuing education course shall be the same as the amount of credit earned by a licensee who completes the course. The instructor must provide proof that he taught the course within the current license period. Licensees who are instructors of continuing education courses approved by the Commission shall not be subject to the fifty-dollar (\$50.00) evaluation fee when applying for continuing education credit for teaching an approved course. No credit toward the continuing education requirement shall be awarded for teaching a real estate prelicensing course.

(e) No carry-over credit to a subsequent license period shall be awarded for taking an unapproved continuing education course or for any real estate education activity other than teaching an approved elective course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1709 EXTENSIONS OF TIME TO COMPLETE CONTINUING EDUCATION

A licensee on active status may request and be granted an extension of time to satisfy the continuing education requirement for a particular license period if he provides evidence satisfactory to the Commission that he was unable to obtain the necessary education due to an incapacitating illness or other circumstance which existed for a substantial portion of the license period and which constituted a severe and verifiable hardship such that to comply with the continuing education requirement would have been impossible or unreasonably burdensome. The Commission will in no case grant an extension of time to satisfy the continuing education requirement for reasons of business or personal conflicts. The Commission also will not grant such an extension of time when, in the opinion of the Commission, the principal reason for the licensee's inability to obtain the required education in a timely manner was unreasonable delay on the part of the licensee in obtaining such education. If an extension of time is granted, the licensee will be permitted to renew his license on active status but the license shall be automatically changed to inactive status at the end of the extension period unless the licensee satisfies the continuing education requirement prior to that time. If an extension of time is not granted, the licensee may either satisfy the continuing education requirement prior to expiration of the license period or renew his license on inactive status. The length of any extension of time granted and the determination of the specific courses which shall be accepted by the Commission as equivalent to the continuing education the licensee would have been required to have completed had he not been granted the extension is wholly discretionary on the part of the Commission. The licensee's request for an extension of time must be submitted on a form prescribed by the Commission.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1710 DENIAL OR WITHDRAWAL OF CONTINUING EDUCATION CREDIT

(a) The Commission may deny continuing education credit claimed by a licensee or reported by a course sponsor for a licensee, and may withdraw continuing education credit previously awarded by the Commission to a licensee upon finding that:

(1) The licensee or course sponsor provided incorrect information to the Com-

mission concerning continuing education completed by the licensee;

- (2) The licensee failed to comply with either the attendance requirement established by Rule .1705 of this Section or the student participation standards set forth in Rule .0511 of Subchapter 58E; or
- (3) The licensee was mistakenly awarded continuing education credit due to an administrative error.

(b) When continuing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the licensee remains responsible for satisfying the continuing education requirement. However, when an administrative error or an incorrect report by a course sponsor results in the denial or withdrawal of continuing education credit for a licensee, the Commission may, upon request of the licensee, grant the licensee an extension of time to satisfy the continuing education requirement.

(c) A licensee who obtains or attempts to obtain continuing education credit through misrepresentation of fact, dishonesty or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES

(a) Real estate brokers and salesmen licensed in North Carolina but residing in another state at the time they apply for license renewal who wish to renew their licenses on active status for a license period beginning on or after July 1, 1995 may fully satisfy the continuing education requirement by completing eight classroom hours of instruction in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence. Credit for such education will be awarded only upon receipt of verification provided by the licensing agency in the licensee's state of residence or by the official course sponsor that the licensee has satisfactorily completed the number of hours of continuing education for which the licensee desires the Commission to award credit.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than 12 months, a nonresident broker or salesman may take continuing education courses approved

by the real estate licensing agency in his state of residence to fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter.

(c) If the licensing agency in the licensee's state of residence does not approve courses for real estate continuing education, or if the licensee is not licensed in his state of residence, the licensee may request that the Commission award continuing education credit for a course not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION

SECTION .0100 - SCHOOLS

.0101 APPLICABILITY: REQUIREMENT FOR APPROVAL

This Section applies to all schools, except private real estate schools, offering either real estate pre-licensing courses prescribed by G.S. 93a-4(a), or appraisal prelicensing or pre-certification courses prescribed by G.S. 93a-73(a). In order for courses conducted by a school to be recognized as real estate pre-licensing courses or appraisal pre-licensing or pre-certification courses by the Commission, the school must obtain approval by the Commission prior to the commencement of any such courses.

Statutory Authority G.S. 93A-4(a),(d).

.0102 APPLICATION FOR APPROVAL

Schools seeking approval to conduct real estate pre-licensing courses or appraisal pre-licensing or pre-certification courses must make written application to the Commission upon a form prescribed by the Commission. Schools shall submit a separate application for each separate department under which courses are to be conducted.

Statutory Authority G.S. 93A-4(a),(d).

.0103 CRITERIA FOR APPROVAL

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the Commission that:

- (1) The school has submitted all information required by the Commission;
- (2) The school is a North Carolina postsecondary educational institution li-

- censed or approved by the State Board of Community Colleges or the Board of Governors of the University of North Carolina or a North Carolina private business or trade school licensed under G.S. 115D-90; and
- (3) The courses to be conducted comply with the standards described in Section .0300 of this Subchapter.
- (b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate or a closely related field may request that appropriate real estate and related courses in its curriculum be approved by the Commission as equivalent to the real estate pre-licensing education program prescribed by G.S. 93A-4(a). ~~Any such institution may also request that real estate appraisal and related courses in its curriculum be approved by the Commission as equivalent to the appraiser pre-licensing or pre-certification education program prescribed by G.S. 93A-73(a).~~ The Commission may, in its discretion, grant such approval and may exempt such school from compliance with the course standards set forth in Section .0300 of this Subchapter.

Statutory Authority G.S. 93A-4,(d).

.0104 SCOPE: DURATION AND RENEWAL OF APPROVAL

- (a) Approval extends only to the courses and location reported in the application for school approval.
- (b) Commission approval of schools shall terminate on the second December 31 following the effective date of approval.

(c) Schools must renew their approval to conduct real estate pre-licensing courses ~~or appraisal pre-licensing or pre-certification courses~~ by satisfying the criteria for original approval described in Rule .0103 of this Section. In order to assure continuous approval, renewal applications should be filed with the Commission biennially according to a schedule established by the Executive Director.

Statutory Authority G.S. 93A-4(a),(d).

.0105 WITHDRAWAL OR DENIAL OF APPROVAL

The Commission may deny or withdraw approval of any school upon finding that such school has:

- (1) refused or failed to comply with any of the provisions of Sections .0100 or .0300

- of this Subchapter;
- (2) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate ~~or appraiser~~ licensing ~~or certification~~ examination questions; or
- (3) compiled a licensing ~~or certification~~ examination performance record for any annual reporting period which is substantially below the performance record of all first-time examination candidates.

Statutory Authority G.S. 93A-4(a),(d).

.0107 USE OF EXAMINATION PERFORMANCE DATA

An approved school may utilize for advertising or promotional purposes licensing ~~or certification~~ examination performance data provided to the school by the Commission, provided that any disclosure of such data by the school must be accurate and must:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination;
- (3) state that the disclosed data was provided by the Commission; and
- (4) be presented in a manner that is not misleading.

Statutory Authority G.S. 93A-4(a),(d).

SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS

.0202 ORIGINAL APPLICATION FEE

The original license application fee shall be two hundred dollars (\$200.00) for each proposed school location and forty dollars (\$40.00) for each real estate pre-licensing course ~~and appraisal pre-licensing and pre-certification course~~ for which the applicant requests approval. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Real Estate Commission and is nonrefundable. The school may offer approved courses at any licensed school location as frequently as is desired during the licensing period without paying additional course fees. Requests for approval of additional courses which are submitted subsequent to filling an

original license application shall be accompanied by the appropriate fee of forty dollars (\$40.00) per course.

Statutory Authority G.S. 93A-33; 93A-34(b).

.0203 SCHOOL NAME

The official name of any licensed private real estate school must contain the words "real estate" and other descriptive words which clearly identify the school as a real estate school and which distinguish the school from other licensed private real estate schools. ~~If the school is to conduct appraisal pre-licensing or pre-certification courses and will not conduct real estate pre-licensing courses, then the school name must contain the word "appraisal" in addition to the words "real estate."~~ The school name must be used in all school publications and advertising.

Statutory Authority G.S. 93A-4(a),(d); 93A-33.

.0204 COURSES

Schools shall comply with the provisions of Section .0300 of this Subchapter regarding pre-licensing and pre-certification courses.

Statutory Authority G.S. 93A-4(a),(d); 93A-33.

.0214 ADVERTISING AND RECRUITMENT ACTIVITIES

(a) A school may utilize for advertising or promotional purposes licensing or certification examination performance data provided to the school by the Commission, provided that any disclosure of such data by the school must be accurate and must:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination;
- (3) state that the disclosed data was provided by the Commission; and
- (4) be presented in a manner that is not misleading.

(b) Schools shall not make or publish, by way of advertising or otherwise, any false or misleading statement regarding employment opportunities which may be available as a result of successful

completion of a course offered by that school or acquisition of a real estate license, ~~or an appraiser license or certificate.~~

(c) Schools shall not use endorsements or recommendations of any person or organization, by way of advertising or otherwise, unless such person or organization has consented in writing to the use of the endorsement or recommendation and is not compensated for such use.

Statutory Authority G.S. 93A-4(a),(d); 93A-33.

**.0218 LICENSING EXAM
CONFIDENTIALITY: SCHOOL
PERFORM./LICENSING**

(a) Schools shall not obtain or use, or attempt to obtain or use, in any manner or form, North Carolina real estate ~~or appraiser~~ licensing or certification examination questions.

(b) Schools must maintain a satisfactory performance record on the real estate ~~and appraiser~~ licensing and certification examinations. A school performance record that is substantially below the performance record of all first-time examination candidates during any annual reporting period shall be considered unsatisfactory under this Rule.

Statutory Authority G.S. 93A-4(a),(d); 93A-33.

**SECTION .0300 - PRE-LICENSING AND
PRE-CERTIFICATION COURSES**

.0301 PURPOSE AND APPLICABILITY

This Section establishes minimum standards for real estate pre-licensing courses prescribed by G.S. 93A-4(a) and appraisal pre-licensing and pre-certification courses prescribed by G.S. 93A-73(a). Except where a school is approved under Rule .0103(b) of this Subchapter, these course standards must be satisfied in order for a school to be approved or licensed, as appropriate, to conduct real estate pre-licensing courses ~~or appraisal pre-licensing or pre-certification courses.~~ Except for the specific exceptions stated in Rule .0403(a) of this Subchapter, these course standards are also applicable to appraisal trade organization courses that are recognized under Section .0400 of this Subchapter as equivalent to the appraisal pre-licensing and pre-certification courses prescribed in Rule .0302(b) and (e) of this Section. The Commission will recognize real estate pre-licensing courses and appraisal pre-licensing and pre-certification courses, as well as equivalent appraisal trade organization courses, only if such courses comply with these standards.

Statutory Authority G.S. 93A-4(a), (d).

.0302 PROGRAM STRUCTURING

(a) Real estate pre-licensing education programs must be structured as prescribed in G.S. 93A-4(a). Completion of the salesman course within the previous five years or possession of a current salesman license must be a prerequisite for enrollment in the advanced broker courses.

(b) Except as provided in Paragraph (d) of this Rule, residential appraiser pre-licensing/pre-certification education programs must include the following three courses, each involving a minimum of 30 classroom hours in order for a school to be approved or licensed, as appropriate, to conduct a residential appraiser prelicensing/precertification program:

- (1) Introduction to Real Estate Appraisal;
 - (2) Valuation Principles and Procedures; and
 - (3) Applied Residential Property Valuation.
- These courses must be completed sequentially in the order listed.

(c) Except as provided in Paragraph (d) of this Rule, general appraiser pre-certification education programs must include the following three courses, each involving a minimum of 30 classroom hours, in addition to the three residential appraiser courses prescribed in Paragraph (b) of this Rule, in order for a school to be approved or licensed, as appropriate, to conduct a general appraiser precertification program:

- (1) Introduction to Income Property Appraisal;
- (2) Advanced Income Capitalization Procedures; and
- (3) Applied Income Property Valuation.

These courses must be completed sequentially in the order listed and completion of the residential appraiser courses within the previous five years or possession of a current appraiser license must be a prerequisite for enrollment in the general appraiser courses.

(d) If college credit is to be granted for an appraisal pre-licensing or pre-certification education program to be offered by a college, university or community college, the school may request approval to structure such program in a manner different from that prescribed in Paragraphs (b) and (c) of this Rule. To be approved by the Commission, the proposed program structure must satisfy the minimum classroom hour requirements for such programs, must provide for appropriate course titles, and must provide for subject area coverage and enrollment prerequisites that are

comparable to the requirements for programs that are structured as described in Paragraphs (b) and (c) of this Rule.

(e) An exception to the course prerequisite requirements stated in Paragraphs (b) and (c) of this Rule or established under Paragraph (d) of this Rule shall be permitted only when the person desiring the exception has obtained from the Commission an exemption from the prerequisite course(s) which the person would normally be required to have completed. A course exemption will be granted only upon a finding by the Commission that the person possesses appraisal education equivalent to the course(s) for which the exemption is requested. A request for course exemption must be made on a form prescribed by the Commission. If a request for course exemption is granted, the person granted the exemption may present the notice of course exemption issued by the Commission to any approved or licensed school in order to obtain the desired exception to the normal prerequisite requirements.

Authority G.S. 93A-4(a), (d); 93A-33; 12 U.S.C. 3332, 3345, and 3347; 12 C.F.R. 34.42.

.0303 COURSE CONTENT

(a) All courses shall consist of instruction in the subject area and at the competency and instructional levels prescribed in the Commission's course syllabi.

(b) Courses may also include coverage of additional related subject areas not prescribed by the Commission; however, any such course must provide additional class time above the minimum requirement of 30 classroom hours for the coverage of such additional subject areas.

(c) Classroom time and instructional materials may be utilized for instructional purposes only and not for promoting the interests of or recruiting employees or members for any particular real estate broker, real estate brokerage firm, or real estate franchise, appraiser, appraisal firm or appraisal trade organization.

Statutory Authority G.S. 93A-4(a), (d); 93A-33.

.0305 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates, and schools may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in

Rule .0304(c) of this Section.

(b) Real estate pre-licensing courses may not have class meetings that exceed six classroom hours in any given day and 18 classroom hours in any given seven-day period.

(c) ~~Appraisal pre-licensing and pre-certification courses may not have class meetings that exceed eight classroom hours in any given day and 30 classroom hours in any given seven-day period.~~

(d) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.

Statutory Authority G.S. 93A-4(a),(d).

.0308 APPRAISAL INSTRUCTORS

(a) ~~Except as indicated in Paragraph (b) of this Rule, all appraisal pre-licensing and pre-certification courses must be taught by instructors who possess good moral character and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Commission to be equivalent to those listed. These qualification requirements must be met on a continuing basis. For a previously approved instructor, experience in teaching appraisal courses may be substituted for any required appraisal experience when a school is seeking continued approval of the instructor. The minimum qualifications are as follows:~~

(1) Residential appraiser courses: 90 classroom hours of real estate appraisal education equivalent to the residential appraiser education program prescribed in Rule .0302(b) of this Section and either two years' full time experience as a residential real estate appraiser within the previous five years or three years' full time experience as a general real estate appraiser within the previous five years, with at least one half of such experience being in residential property appraising. After July 1, 1991, instructors must also be either state certified residential or state certified general real estate appraisers.

(2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education program prescribed in Rule .0302(e) of this Section and three years' full time experience as a

~~general real estate appraiser within the previous five years, with at least one third of such experience being in income property appraising. After July 1, 1991, instructors must also be state certified general real estate appraisers.~~

(b) ~~Guest lecturers who do not possess the qualifications stated in paragraph (a) of this Rule may be utilized to teach collectively up to one third of any course, provided that each guest lecturer possesses experience directly related to the particular subject area he is teaching.~~

Statutory Authority G.S. 93A-33; 93A-75(a).

.0309 CERTIFICATION OF COURSE COMPLETION

Applicants for licensure or certification must provide verification of satisfactory course completion on an official certificate in a format prescribed by the Commission. Such certificates will not be accepted if they were issued to students prior to the last scheduled class meeting of a course. Certificates of course completion submitted to the Commission must be on the official stationery of the school and must have the original signature or signature stamp of the dean, director, department head or other official responsible for supervising the conduct of the course.

Statutory Authority G.S. 93A-4(a),(d); 93A-33.

SECTION .0400 - APPRAISAL TRADE ORGANIZATION COURSES

.0401 PURPOSE AND APPLICABILITY

This Section establishes procedures by which an appraisal trade organization may seek recognition of its appraisal courses as equivalent to the appraisal pre-licensing and pre-certification courses required by G.S. 93A-73(a) and specified in Rule .0302 of this Subchapter. By obtaining equivalent recognition of its courses under this Section, an appraisal trade organization may facilitate for its members the process of qualifying for appraiser licensure or certification in North Carolina. Appraisal trade organizations may not, however, utilize the procedures established in this Section to obtain approval to conduct the appraisal pre-licensing and pre-certification courses prescribed by G.S. 93A-73(a) and specified in Rule .0302 of this Subchapter. In order to conduct such courses, appraisal trade organizations must obtain a private real estate school license as required by G.S. 93A-34.

Statutory Authority G.S. 93A-75(a).

.0402 APPLICATION AND FEE

(a) Appraisal trade organizations seeking recognition of their courses as equivalent to North Carolina appraisal pre licensing and pre certification courses must make written application to the Commission on a form prescribed by the Commission. Application must be made by an authorized administrative official from the principal office of the appraisal trade organization. Applications will not be accepted from a chapter or other subsidiary of an appraisal trade organization.

(b) The original application fee shall be two hundred fifty dollars (\$250.00) for each course which the Commission is being requested to evaluate and recognize. The fee shall be paid by certified check, bank check, or money order payable to the North Carolina Real Estate Commission and is nonrefundable. An organization may offer recognized equivalent courses as frequently as is desired during the period for which recognition is granted without paying additional course fees.

Statutory Authority G.S. 93A-75(a) and (b).

.0403 CRITERIA FOR COURSE RECOGNITION

(a) Appraisal trade organization courses must be found by the Commission to be substantially equivalent to the appraisal pre licensing and pre certification courses prescribed in Rule .0302(b) and (e) of this Subchapter. Such courses must be conducted in accordance with the minimum course standards prescribed in Section .0300 of this Subchapter, provided that the following exceptions to those standards shall apply:

- (1) Appraisal trade organization education programs may be structured differently from the program structure prescribed in Rule .0302(b) and (e) of this Subchapter; however, the programs must provide for appropriate prerequisites for advanced courses and each appraisal trade organization course for which commission recognition is sought must consist of a minimum of 15 classroom hours.
- (2) Appraisal trade organization courses may be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day and 40 classroom hours in any given seven day period; however, equivalent

credit for courses scheduled for more than 30 classroom hours per seven day period will be limited to 30 classroom hours per seven day period.

(3) Instructor qualifications will generally not be approved by the Commission on an individual basis; however, the appraisal trade organization must have and enforce written instructor qualification requirements that are equivalent to those prescribed in Rule .0308 of this Subchapter.

(4) Appraisal trade organizations are not subject to the 90 day limit for allowing students to make up a missed course examination or to retake a failed course examination without repeating the course; however, the appraisal trade organization must have an appropriate written policy regarding this matter.

(b) The appraisal trade organization must have and enforce written policies which require their courses to be conducted in classroom facilities that provide an appropriate learning environment.

(c) The appraisal trade organization must have written policies with regard to course cancellation and the refund of tuition and other course fees. Such policies must be provided to prospective students prior to acceptance of any fees from such prospective students and the organization must enforce such policies in a fair and reasonable manner.

(d) Various combinations of appraisal trade organization courses may be recognized as equivalent to single North Carolina appraisal pre licensing or pre certification courses or to the North Carolina appraisal prelicensing (residential appraiser) or appraisal pre certification (general appraiser) education programs; however, equivalent credit will be granted only in increments of 30 classroom hours.

Statutory Authority G.S. 93A-75(a).

.0404 CHANGES DURING THE RECOGNITION PERIOD

Appraisal trade organizations must obtain advance approval from the Commission for any changes to be made in commission recognized equivalent courses with regard to program structuring, course content, course completion standards, textbooks or course materials, or instructor qualification requirements. Requests for approval of such changes must be in writing.

Statutory Authority G.S. 93A-75(a).

.0405 ADVERTISING OF RECOGNITION AND EXAMINATION PERFORMANCE

(a) An organization that has obtained commission recognition of its courses under this Section may advertise that such courses are "recognized" for equivalent credit toward the requirements for initial North Carolina real estate appraiser licensure or certification. Such advertisement may not, however, state that such courses are "approved" North Carolina appraisal pre-licensing or pre-certification courses.

(b) An organization that has obtained commission recognition of its courses under this Section may utilize for advertising or promotional purposes licensing or certification examination performance data provided to the organization by the Commission, provided that any disclosure of such data by the organization must be accurate and must:

- (1) be limited to the annual examination performance data for the particular organization and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first time candidates examined, and either the number or percentage of first time candidates passing the examination;
- (3) state that the disclosed data was provided by the Commission; and
- (4) be presented in a manner that is not misleading.

Statutory Authority G.S. 93A-75(a).

.0406 RENEWAL OF COMMISSION RECOGNITION: FEE

(a) Commission recognition of appraisal trade organization courses expires on the next June 30 following the date of issuance, except that approvals granted prior to July 1, 1990 shall not expire until June 30, 1991. In order to assure continuous recognition of courses, applications for renewal of commission recognition, accompanied by the prescribed renewal fee, should be filed with the Commission annually on or before June 1. Incomplete renewal applications which are not completed by July 1 shall be treated as original applications.

(b) The annual fee for renewal of commission recognition shall be one hundred twenty-five dollars (\$125.00) for each course for which renewal of commission recognition is requested. The fee

shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable. If the organization requests commission recognition of additional courses for which recognition was not granted in the previous year, the fee for such additional courses is two hundred fifty dollars (\$250.00) per course.

Statutory Authority G.S. 93A-75(a) and (b).

.0407 WITHDRAWAL OR DENIAL OF COMMISSION RECOGNITION

The Commission may deny or withdraw recognition of any appraisal trade organization courses upon finding that:

- (1) the organization has made any false statements or presented any false information in connection with an application for commission recognition of its courses;
- (2) the organization has refused or failed to comply with any of the provisions of this Section;
- (3) the organization's courses do not comply with the course standards prescribed in Rule .0403 of this Section and Section .0300 of this Subchapter;
- (4) the organization has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina appraiser licensing or certification examination questions; or
- (5) the organization has compiled an appraiser licensing or certification examination performance record for any annual reporting period which is substantially below the performance record of all first time examination candidates.

Statutory Authority G.S. 93A-75(a).

SUBCHAPTER 58D - REAL ESTATE APPRAISERS

SECTION .0100 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE

.0101 FORM

A person who wishes to file an application for a real estate appraiser license or certificate may obtain the required form upon request to the Commission. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, a recent passport size photograph of the applicant, place of

residence and employment, education, and such other information as may be necessary to identify the applicant and determine his qualifications and fitness for licensure or certification.

Statutory Authority G.S. 93A-73(a); 93A-77.

.0102 FILING AND FEES

(a) Properly completed applications must be received in the Commission's office or postmarked not later than the filing date established by the Executive Director for a scheduled examination and must be accompanied by the appropriate fee. Once the application has been filed and processed, the application fee may not be refunded.

(b) The following fees shall be charged:

- (1) application for original residential appraiser license \$150.00
- (2) application for original residential appraiser certificate \$150.00
- (3) application for original general appraiser certificate \$150.00

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Real Estate Commission.

Statutory Authority G.S. 93A-73(a), (b); 93A-77.

SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION

.0201 QUALIFICATIONS FOR APPRAISER LICENSURE AND CERTIFICATION

(a) Applicants for licensure as a state licensed residential real estate appraiser and for certification as a state certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93A-73 as further set forth in Subparagraphs (a) (1), (2) and (3) of this Rule, provided however that licensure as a state licensed residential real estate appraiser is not a prerequisite for certification as a state certified residential or general real estate appraiser:

- (1) Applicants for licensure as a state licensed residential real estate appraiser shall have completed, within the five year period immediately preceding the date application is made, courses in Introduction to Real Estate Appraisal, Valuation Principles and Practices, and Applied Residential Property Valuation each consisting of at least 30 classroom hours of instruction, or appraisal education found by the

Commission to be equivalent to such courses; and have at least 2,000 hours of appraisal experience.

- (2) Applicants for certification as a state certified residential real estate appraiser, within the five year period immediately preceding the date application is made, shall have completed those courses required for licensure as a state licensed residential real estate appraiser or equivalent education and, in addition, a course in Introduction to Income Property Appraisal consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,000 hours of appraisal experience acquired over a minimum period of two calendar years.
- (3) Applicants for certification as a state certified general real estate appraiser, within the five year period immediately preceding the date application is made, shall have completed those courses required for certification as a state certified residential real estate appraiser or equivalent education and, in addition, courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,000 hours of appraisal experience acquired over a minimum period of two calendar years of which at least 50 percent must have been in appraising non-residential real estate.

- (b) When a state licensed real estate appraiser becomes certified as a state certified real estate appraiser, his licensure shall be immediately cancelled by the Commission and he must return his license certificate and any pocket renewal card to the Commission within ten days of the date of certification as a state certified real estate appraiser.

Authority G.S. 93A-73; 93A-77; 12 U.S.C. 3332, 3345, and 3347; 12 C.F.R. 34.42.

.0202 CHARACTER

(a) At a meeting of the Appraisal Board following each real estate appraiser licensing or certification examination, the applicants who have passed the examination shall be considered for licensing or certification. When the moral character of an

applicant is in question, action by the Board will be deferred until the applicant has affirmatively demonstrated that he possesses the requisite truthfulness, honesty and integrity.

(b) When the moral character of an applicant is in question, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his character and fitness for licensure or certification at a hearing before the Board.

(c) Notice to the applicant that his moral character is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his application for licensing or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from re applying for licensure or certification.

Statutory Authority G.S. 93A-73(c); 93A-77.

.0203 LICENSE AND CERTIFICATE RENEWAL

(a) A holder of an appraiser license or certificate desiring the renewal of such license or certificate shall, during the month of June, apply for same in writing upon a form approved by the Commission and shall forward the required fee of one hundred dollars (\$100.00). Forms are available upon request to the Commission.

(b) As a condition of renewal, all licensees and certificate holders, either active or inactive, resident or non resident, shall be required to satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(c) An applicant applying for renewal of a license or certificate obtained by reciprocity must submit with the renewal application a current license history from the appraiser regulatory authority of the state upon whose qualification requirements the reciprocal license or certificate was granted showing that the applicant is currently licensed or certified in good standing. Submission of false or misleading information to the Board in connection with license or certificate renewal shall constitute grounds for disciplinary action.

(d) Any person who acts or holds himself out as a state-licensed or state-certified real estate appraiser while his appraiser license or certificate is expired will be subject to disciplinary action and penalties as prescribed in Chapter 93A of the

North Carolina General Statutes.

Statutory Authority G.S. 93A-74(a),(b); 93A-77.

.0204 CONTINUING EDUCATION

(a) All real estate appraiser licensees and certificate holders shall, upon the second renewal of their license or certificate following their initial licensure or certification by the Commission, and upon each subsequent renewal, present evidence satisfactory to the Commission of having obtained, within the immediately preceding licensing/certification period (July 1-June 30) education consisting of at least ten classroom hours of instruction. Except as provided in Paragraphs (f) and (g) of this Rule, such education must have been obtained by taking courses approved by the Commission for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of state-licensed and state-certified real estate appraisers. There is no exemption from the continuing education requirement for appraisers whose licensed or certified status has been upgraded to the level of certified residential or certified general appraiser since the issuance or most recent renewal of their license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the annual continuing education requirement.

(b) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules, or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; and similar topics. The license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(c) No carry over to a future year of excess continuing education credit hours obtained in a previous year is permitted. A minimum of ten hours of continuing education must be obtained during each year.

(d) Course sponsors must provide a prescribed certificate of course completion to each licensee and certificate holder satisfactorily completing a course. The licensee or certificate holder should

submit the original of this certificate to the Commission as soon as possible after completing the course and must submit such certificate not later than the next June 30 following course completion. In order to renew a license or certificate in a timely manner, the Commission must have received from the licensee or certificate holder proper proof of his having fully satisfied the continuing education requirement prior to processing his license or certificate renewal application. If a licensee or certificate holder fails to provide by June 30 of any year proper proof of having fully satisfied the continuing education requirement, his license or certificate will expire as of that date and he will be subject to the provisions of Rules .0203(d) and .0206 of this Section.

(e) A course may be taken only once for continuing education credit within a three year period.

(f) A current or former licensee or certificate holder may request that the Commission grant continuing education credit for a course taken by the licensee or certificate holder that is not approved by the Commission, or for appraisal education activity equivalent to a Commission approved course, by making such request on a form prescribed by the Commission and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course will be granted only if the licensee or certificate holder provides satisfactory proof of course completion and the Commission finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The awarding of credit for such activities is wholly discretionary on the part of the Commission. Licensed or certified appraisers who between July 1 and June 30 of the period for which continuing education credit is requested have taught an appraisal course or courses approved by the Commission for continuing education credit will be deemed to have taken an equivalent course and will not be subject to the fifty dollar (\$50.00) fee, provided they submit verification satisfactory to the Commission of having taught the course(s).

(g) A state licensed or state certified residential real estate appraiser may fully satisfy the continuing education requirement by taking the Applied

Residential Property Valuation (R 3) pre-licensing and pre-certification course, provided that he has not taken such course within the previous three years. A state certified general real estate appraiser may fully satisfy the continuing education requirement by taking either the Applied Residential Valuation (R 3) pre-licensing and pre-certification course or the Applied Income Property Valuation (G 3) pre-certification course, provided that he has not taken either of these courses within the previous three years.

(h) A licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Commission that he was unable to obtain the necessary education due to an incapacitating illness, military assignment outside the 50 states, or similar condition. If an extension of time is granted, the licensee or certificate holder will be permitted to renew or reinstate, as appropriate, his license or certificate for that period of time for which the extension was granted. The granting of such request and the length of any extension of time granted are wholly discretionary on the part of the Commission.

Statutory Authority G.S. 93A-74(a),(b); 93A-75(d); 93A-77.

.0205 INACTIVE STATUS

(a) A licensee or certificate holder shall be assigned by the Commission to inactive status upon written request to the Commission.

(b) A licensee or certificate holder whose appraiser license or certificate is on inactive status shall be returned to active status upon making a written request to the Commission.

(c) A licensee or certificate holder on inactive status shall not be entitled to act as a state licensed or state certified real estate appraiser; however, in order to continue to hold an appraiser license or certificate, the licensee or certificate holder whose license or certificate is on inactive status must renew his license or certificate, including payment of the prescribed renewal fee and completion of all continuing education.

(d) The Commission may take disciplinary action against a licensee or certificate holder on inactive status.

Statutory Authority G.S. 93A-77.

.0206 EXPIRED LICENSE OR CERTIFICATE

(a) Expired real estate appraiser licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Commission of the one hundred dollar (\$100.00) renewal fee plus a late filing fee of ten dollars (\$10.00) per month for each month or part thereof that such license or certificate is lapsed, and provision of proof of having obtained the continuing education that would have been required had the license or certificate been continuously renewed.

(b) Licenses and certificates expired for more than 12 months may be considered for reinstatement upon proper application, payment of the one hundred fifty dollar (\$150.00) original license or certificate fee, payment of the one hundred twenty dollar (\$120.00) late filing fee, and provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed. Such applications will be reviewed by the Commission to determine whether an examination and/or additional real estate appraisal education will be required.

Statutory Authority G.S. 93A-74(b), (c); 93A-75(d); 93A-77.

.0207 PAYMENT OF LICENSE AND CERTIFICATE FEES

Checks given the Commission in payment of real estate appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.

Statutory Authority G.S. 93A-77.

.0208 REPLACEMENT LICENSE OR CERTIFICATE FEE

A licensee or certificate holder may, by filing a prescribed form and paying a five dollar (\$5.00) fee to the Commission, obtain a duplicate real estate appraiser license or certificate or pocket card to replace an original license certificate or pocket card which has been lost, damaged or destroyed or if the name of the licensee or certificate holder has been lawfully changed.

Statutory Authority G.S. 93A-74(d); 93A-77.

.0209 FEDERAL APPRAISER REGISTRY

Licensees and certificate holders who are qualified for enrollment in the federal roster or registry

of state licensed and state certified real estate appraisers may apply for enrollment or for the renewal or reinstatement of such enrollment in writing upon a form approved by the Commission accompanied by the fee established for that purpose by the appropriate federal agency or instrumentality.

Statutory Authority G.S. 93A-79(e); 93A-77.

.0210 TEMPORARY PRACTICE

(a) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this State by filing with the Commission a notarized application on a form prescribed by the Commission for such purpose which shall set forth and include:

- (1) the applicant's name, address, social security number and such other information as may be necessary to identify the applicant;
- (2) an original statement by the appraiser licensing or certifying agency in the applicant's resident state issued under seal no more than thirty days prior to the application date setting forth:
 - (A) the applicant's name, business name and address;
 - (B) the type license or certificate held by the applicant and the license or certificate number;
 - (C) the dates of licensure or certification and the expiration date of the applicant's current license or certificate;
 - (D) whether or not the license or certificate was issued as a result of passing a licensure/certification examination, by reciprocity, or by some other means; and
 - (E) a complete record of any disciplinary actions taken or disciplinary proceedings pending against the applicant;
- (3) an irrevocable consent that service of process in any action against the applicant arising out of the applicant's appraisal activities in this State may be made by delivery of the process on the Executive Director of the Commission;
- (4) a statement that the applicant has read and agrees to abide by all appraiser laws and rules in this State and agrees to cooperate with any investigation

initiated by the Commission at the direction of the Appraisal Board including supplying relevant documents and personally appearing before the Board or the Commission's investigators;

(5) information sufficient to identify the appraisal assignment to be performed under the temporary practice permit, including the projected beginning and ending dates for performing such appraisal assignment, but shall not require the applicant to divulge any information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice; and

(6) such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this State.

(b) Upon filing a properly completed application and otherwise satisfying the Appraisal Board as to his qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Commission authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment.

(c) Licensing and certification privileges granted under the provisions of this Rule shall expire upon the completion of the appraisal assignment described in the application for temporary licensing or certification privileges or on the expiration date set forth in the temporary practice permit, whichever shall come first. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Commission shall extend the licensing or certification privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary licensing or certification privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina state licensed or state certified appraiser.

Authority G.S. 93A-77; Title XI, Section 1122 (a); 12 U.S.C. 3351(a).

SECTION .0300 - APPRAISER EXAMINATIONS

.0301 TIME AND PLACE

(a) Examinations for real estate appraiser licenses and certificates will be scheduled at such times and places as determined by the Executive Director. Applicants will be scheduled for examination based on the date of application filing in accordance with the Commission's published schedule of examination dates and application filing dates. Applicants will be given written notice of when and where to appear for examination.

(b) Except as provided in Paragraph (e) of this Rule, an applicant who has been scheduled for a particular examination date will not be rescheduled for a later examination date without filing another application and fee unless a request to be rescheduled is made at least 15 days in advance of the scheduled examination date. A scheduled examination date may only be postponed until one of the next two following scheduled examination dates.

(c) An applicant may be granted an excused absence from a scheduled examination if he provides evidence satisfactory to the Commission that his absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the examination date will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination.

Statutory Authority G.S. 93A-73(c); 93A-77.

.0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for licensure as a state-licensed residential real estate appraiser and for certification as a state-certified residential real estate appraiser shall test applicants on the following general subject areas:

- (1) basic real property law;
- (2) concepts of value;
- (3) forces affecting real estate values;
- (4) residential real estate financing;

- (5) residential construction and design;
- (6) the appraisal process;
- (7) valuation principles and procedures;
- (8) application of valuation principles and procedures to the valuation of various types of residential properties and to related appraisal assignments;
- (9) standards of appraisal practice;
- (10) the North Carolina Real Estate Appraisers Act and related commission rules; and
- (11) related subject areas.

(b) In addition to the subject areas listed in (a) of this Rule, the examination for certification as a state certified general real estate appraiser shall test applicants on the following general subject areas:

- (1) income capitalization principles and procedures;
- (2) application of valuation principles and procedures to the valuation of all types of income producing and other properties and to related appraisal assignments; and

- (3) related subject areas.

(c) In order to pass the examination for licensure as a state licensed residential real estate appraiser or for certification as a state certified residential real estate appraiser or state certified general real estate appraiser, an applicant must attain a score equal to at least 75 percent of the total point value for the questions on the examination. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score.

Statutory Authority G.S. 93A-73(c); 93A-77.

.0303 RE-EXAMINATION

If an applicant for a real estate license or certificate fails to pass or appear for any examination for which he has been scheduled, he shall make written application to the Commission upon a prescribed form accompanied by the appropriate fee if he wishes to be scheduled for another examination.

Statutory Authority G.S. 93A-73(c); 93A-77.

.0304 CHEATING AND RELATED MISCONDUCT

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with

any person other than an examination supervisor during an examination. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a real estate appraiser license or certificate, as well as for disciplinary action if the applicant holds an appraiser license.

Statutory Authority G.S. 93A-73(c); 93A-77.

.0305 CONFIDENTIALITY OF EXAMINATIONS

Licensing and certification examinations are the exclusive property of the Commission and are confidential. No applicant, licensee, or certificate holder shall obtain, attempt to obtain, receive or communicate to other persons examination questions. Violation of this Rule shall be grounds for denial of a real estate appraiser license or certificate if the violator is an applicant and disciplinary action if the violator holds an appraiser license.

Statutory Authority G.S. 93A-77.

.0306 EXAMINATION REVIEW

(a) An applicant who fails an examination may review his examination at such times and places as are scheduled by the Executive Director. A request to review an examination must be made not later than the request deadline date established by the Executive Director for a scheduled examination review date. Failure to request an appointment to review an examination by the request deadline date shall constitute a waiver of the right to review such examination. Applicants who pass an examination may not review their examination. Applicants who review their examination may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant.

(b) An applicant may be granted an excused absence from a scheduled examination review if he provides evidence satisfactory to the Commission that his absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the scheduled examination review will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from

attending the examination review. An applicant who fails to appear for a scheduled examination review and who does not obtain an excused absence in accordance with this Rule shall be deemed to have waived his right to review his examination.

Statutory Authority G.S. 93A-73(c); 93A-77.

SECTION .0400 - GENERAL APPRAISAL PRACTICE

.0401 USE OF TITLES

(a) A state licensed residential real estate appraiser shall utilize the term "state licensed residential real estate appraiser" and a state certified residential real estate appraiser shall utilize the term "state certified residential real estate appraiser" when performing appraisals of residential real estate, as defined in G.S. 93A-72, or any interest therein. A state certified general real estate appraiser shall utilize either the term "state certified general real estate appraiser" or "state certified residential/general real estate appraiser" when performing appraisals of all types of real estate or any interest therein.

(b) Licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a state licensed or state certified real estate appraiser.

Statutory Authority G.S. 93A-77.

.0402 DISPLAY OF LICENSES AND CERTIFICATES

(a) The real estate appraiser license or certificate of a state licensed or state certified real estate appraiser shall be prominently displayed at the appraiser's place of business, provided that the license or certificate of a managing appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the managing appraiser shall be prominently displayed at such office.

(b) The annual license or certificate renewal pocket card issued by the Commission to each state licensed or state certified real estate appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

Statutory Authority G.S. 93A-77.

.0403 ADVERTISING

(a) When advertising or otherwise holding himself out as a real estate appraiser, a

state licensed residential real estate appraiser shall identify himself as a "state licensed residential real estate appraiser", a state certified residential real estate appraiser shall identify himself as a "state certified residential real estate appraiser", and a state certified general real estate appraiser shall identify himself as either a "state certified general real estate appraiser" or a "state certified residential/general real estate appraiser".

(b) A state licensed or state certified real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is either licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the licensee or certificate holder, he shall first notify the Commission in writing of such name and furnish the Commission with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with Section 66-68, North Carolina General Statutes.

Statutory Authority G.S. 93A-71(d); 93A-77.

.0404 CHANGE OF NAME OR ADDRESS

All licensees and certificate holders shall notify the Commission in writing of each change of business address, residence address, or trade name within ten days of said change. The address shall be sufficiently descriptive to enable the Commission to correspond with and locate the licensee or certificate holder.

Statutory Authority G.S. 93A-77.

.0405 CERTIFIED APPRAISALS

(a) A state certified residential real estate appraiser may perform certified appraisals of residential real estate and a state certified general real estate appraiser may perform certified appraisals on all types of real estate and may identify such appraisals as being "certified".

(b) All real estate appraisal assignments performed and all appraisal reports issued by state certified real estate appraisers shall be deemed to be "certified" appraisals unless otherwise indicated on the appraisal report, or, in the event of an oral appraisal report, the person receiving the report is clearly informed by the

state certified appraiser that the appraisal is not a "certified" appraisal.

Statutory Authority G.S. 93A-71(g); 93A-77.

.0406 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the direction of a state licensed or state certified real estate appraiser shall bear the signature of the state licensed or state certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state licensed residential real estate appraiser", "state certified residential real estate appraiser", or the designation "state certified general real estate appraiser", or "state certified residential/general real estate appraiser", as applicable. Each such appraisal report shall also indicate whether or not the state licensed or state certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every state licensed and state certified real estate appraiser shall affix or stamp to all appraisal reports a seal of a design authorized by the Commission which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "state licensed residential real estate appraiser", a "state certified residential real estate appraiser", or as a "state certified general real estate appraiser" or "state certified residential/general real estate appraiser", as applicable.

(c) A state licensed or state certified real estate appraiser who signs an appraisal report prepared by another person, including a subcontractor, acting under the direction or supervision of the appraiser shall be fully responsible for the content of the report.

(d) Notwithstanding the provisions of Rule .0405 of this Section regarding the issuance of oral appraisal reports, a written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

Statutory Authority G.S. 93A-77.

.0407 MANAGING APPRAISER

(a) A "managing appraiser" shall be designated with the Commission for each appraisal firm and each combined real estate brokerage and appraisal firm for which real estate appraisals are performed by:

- (1) two or more state licensed or state certified real estate appraisers who are employed by or associated with the firm; or
- (2) unlicensed or uncertified assistants, other than clerical employees, who are employed by or associated with the firm and who assist a state licensed or state certified real estate appraiser in the performance of real estate appraisals.

If one or more state certified general real estate appraisers is employed by or associated with the firm, the managing appraiser must be a state certified general real estate appraiser. If one or more state certified residential real estate appraisers is employed by or associated with the firm, the managing appraiser must be a state certified residential or general real estate appraiser. If only state licensed residential real estate appraisers are employed by or associated with the firm, the managing appraiser may be a state licensed residential real estate appraiser.

(b) The designated managing appraiser shall be responsible for:

- (1) the proper display of licenses and certificates of all state licensed and state certified real estate appraisers employed by or associated with the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule .0203 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising of appraisal services by or in the name of the firm;
- (4) the proper retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;
- (5) the maintenance of a record for each of the firm's unlicensed and uncertified assistants that generally describes the nature and extent of assistance rendered in connection with each appraisal; and
- (6) the maintenance of a record for each of the firm's state licensed and state certified residential real estate appraisers that generally describes the nature and extent of assistance rendered

by the state licensed residential real estate appraiser when assisting a state certified residential or general real estate appraiser and any assistance rendered by the state certified residential real estate appraiser when assisting a state certified general real estate appraiser in performing an appraisal.

No licensee or certificate holder shall be managing appraiser of more than one appraisal firm or combined real estate brokerage and appraisal firm.

(e) Each managing appraiser shall notify the Commission in writing of any change in his status as managing appraiser within ten days following the change.

Statutory Authority G.S. 93A-77.

.0408 SUPERVISION OF UNLICENSED AND UNCERTIFIED ASSISTANTS

A state licensed or state certified real estate appraiser may employ a person or persons not licensed or certified as a real estate appraiser to assist in the performance of real estate appraisals, provided that the state licensed or state certified real estate appraiser:

- (1) actively and personally supervises the unlicensed and uncertified assistant;
- (2) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of an unlicensed and uncertified assistant is utilized;
- (3) complies with all provisions of Rule .0406 of this Section regarding appraisal reports; and
- (4) prepares and furnishes to the managing appraiser, if applicable, and to each unlicensed and uncertified assistant whose services were utilized in connection with the appraisal, a report on a form prescribed by the Commission describing the nature and extent of assistance rendered by the unlicensed and uncertified assistant in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal.

Statutory Authority G.S. 93A-71(f); 93A-77.

.0409 SUPERVISION OF LICENSED AND CERTIFIED RESIDENTIAL APPRAISERS

(a) When a state licensed residential real estate appraiser assists a state certified residential or general real estate appraiser in the performance of

a real estate appraisal and the resulting appraisal report is to be signed by the state certified real estate appraiser, the state certified real estate appraiser shall:

- (1) actively and personally supervise the state licensed real estate appraiser;
- (2) review the appraisal report and supporting data used in connection with the appraisal;
- (3) comply with all provisions of Rule .0406 of this Section regarding appraisal reports; and
- (4) prepare and furnish to the managing appraiser, if applicable, and to each state licensed real estate appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Commission describing the nature and extent of assistance rendered by the state licensed real estate appraiser in connection with the appraisal, and place a copy of such report in the supporting file for the appraisal.

(b) When a state certified residential real estate appraiser assists a state certified general real estate appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified general real estate appraiser, the state certified general real estate appraiser shall perform those supervisory acts set forth in Paragraph (a) of this Rule with regard to the activities of the state certified residential real estate appraiser.

Statutory Authority G.S. 93A-77.

SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE

.0501 APPRAISAL STANDARDS

(a) Every state licensed and state certified real estate appraiser shall, in performing the acts and services of a state licensed or state certified real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards are hereby adopted by reference in accordance with G.S. 150B-14(e). For the purpose of this Rule, the "Uniform Standards of Professional Appraisal Practice" shall include the Preamble, Ethics Provision, Competency Provision, Departure Provision, Jurisdictional Exception, Definitions, Supplemental

Standards, Statements on Appraisal Standards, and Standards 1, 2, and 3.

(b) Copies of the "Uniform Standards of Professional Appraisal Practice" are available upon request to the Commission.

Statutory Authority G.S. 93A-77.

SECTION .0600 - APPRAISAL BOARD HEARINGS

.0601 SCOPE

The provisions of this Section shall apply to contested cases heard by the Real Estate Appraisal Board only and shall not apply to hearings conducted by the Real Estate Commission pursuant to Articles 1, 2, 3, and 4 of Chapter 93A of the General Statutes.

Statutory Authority G.S. 93A-77; 150B-38(h).

.0602 FORM OF COMPLAINTS AND OTHER PLEADINGS

(a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the respondent licensed or certified appraiser and shall reasonably apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation shall not be limited to the persons or transactions described or alleged in the complaint. Persons making complaints may at any time submit additional information or may otherwise amend their complaints.

(c) When a complaint is not verified by the person making the complaint, the Board, through its Legal Counsel, may consider the complaint on its own motion.

(d) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(e) There shall be no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.

(f) Hearings in contested cases before the Board shall be governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

Statutory Authority G.S. 93A-77; 150B-38(h).

.0603 PRESIDING OFFICER

The Appraisal Board may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Board shall preside, or, in his absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request shall be determined by a majority of the Board.

Statutory Authority G.S. 93A-77; 150B-38(h).

.0604 SUBPOENAS

(a) The Executive Director of the Real Estate Commission and the Commission's Legal Counsel shall have the authority to issue subpoenas in the name of the Board. In the Executive Director's absence, the recording secretary of the Commission shall have the authority to issue subpoenas in the name of the Board.

(b) The presiding officer in a contested case shall also have the authority to issue subpoenas relating to that contested case.

Statutory Authority G.S. 93A-77; 150B-38(h).

.0605 FINAL DECISIONS

(a) If, after the conclusion of a hearing in a contested case the Board determines to take disciplinary action against a licensed or certified appraiser, the Board shall direct the Real Estate Commission to issue a final decision and order in conformity with the Board's determination.

(b) If the matter in issue in a contested case before the Board is the moral character and fitness for licensure or certification of any applicant, after the conclusion of the hearing the Board shall determine whether or not the applicant is morally fit and shall direct the Commission to issue or deny the license or certificate in conformity with the Board's determination.

Statutory Authority G.S. 93A-77; 150B-38(h).

.0606 PETITION TO REOPEN PROCEEDING

(a) After a final decision has been reached by the Board in a contested case, a party may petition

the Board to reconsider a case. Petitions will not be granted except when the petitioner can show that the reasons for reconsidering the case are to introduce newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or unavoidable circumstance. Upon the running of the 30 day period for seeking judicial review, such petitions will have no effect.

(b) Decisions on petitions to reopen cases are within the discretion of the Board.

(c) If, as a result of its reconsideration of a contested case, the Board modifies its original decision, it shall notify the Real Estate Commission which shall modify its action in conformity with the Board's ruling.

Statutory Authority G.S. 93A-77; 150B-38(h).

SECTION .0700 - DECLARATORY RULINGS

.0701 REQUESTS FOR RULINGS: DISPOSITION OF REQUESTS

(a) All requests for declaratory rulings shall be written and filed with the Board. The request must contain the following information:

- (1) the name, address and signature of petitioner;
- (2) a concise statement of the manner in which petitioner is aggrieved by the rule or statute in question, or its potential application to him;
- (3) a statement of the interpretation given the statute or rule in question by petitioner;
- (4) a statement of the reasons, including any legal authorities, in support of the interpretation given the statute or rule by petitioner.

(b) The Board shall either deny the request, stating the reasons therefor, or issue a declaratory ruling. When in its discretion, the Board determines that the issuance of a declaratory ruling is undesirable, it may refuse to issue such ruling.

(c) The Board shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Real Estate Commission or contested case before the Board.

Statutory Authority G.S. 93A-77; 150B-4.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0100 - UPDATE COURSE

.0101 PURPOSE AND APPLICABILITY

This Section describes the update course component of the continuing education requirement for real estate licensees and prescribes the criteria and procedures for a prospective sponsor to obtain approval to conduct a Commission-developed update course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0102 UPDATE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesman must complete, within one year preceding license expiration and in addition to satisfying the continuing education elective requirement described in Section .0302 of this Subchapter, a Commission-developed update course consisting of four classroom hours of instruction.

(b) The Commission shall develop annually an update course which shall be conducted by sponsors approved by the Commission under this Subchapter. The subject matter of this course shall be determined by the Commission, which shall produce instructor and student materials for use by course sponsors. The Commission shall prepare a completely new course for each one-year period beginning July 1 and ending the next June 30. Sponsors must acquire the Commission-developed course materials and utilize such materials to conduct the update course. The course must be conducted exactly as prescribed by the rules in this Subchapter and the course materials developed by the Commission. All course materials developed by the Commission for use in an update course shall be the property of the Commission and shall not be copied or used except as directed by the Commission. Sponsors must provide licensees participating in their classes a copy of the student materials developed by the Commission.

(c) Approval of a sponsor to conduct an update course authorizes the sponsor to conduct the update course using an instructor who has been approved by the Commission as an update course instructor under Section .0200 of this Subchapter. The sponsor may conduct the update course at any location as frequently as is desired during the approval period, provided that no courses may be conducted between June 11 and June 30 of any approval period.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0103 APPLICATION FOR ORIGINAL APPROVAL

An entity seeking original approval to sponsor a Commission-developed update course must make application on a form prescribed by the Commission. Beginning in 1995, such applications must be submitted prior to April 1 or after June 30 of any calendar year. Applications for original approval will not be accepted between April 1 and June 30 of any calendar year after 1994. The applicant must submit a nonrefundable fee of one hundred dollars (\$100.00) in the form of a certified check, bank check or money order payable to the North Carolina Real Estate Commission; provided, however, that no fee is required if the entity making application is a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0104 CRITERIA FOR APPROVAL OF UPDATE COURSE SPONSOR

Approval to sponsor a Commission-developed update course shall be granted to an applicant upon showing to the satisfaction of the Commission that:

- (1) The applicant has submitted all information required by the Commission and paid the application fee, if applicable;
- (2) The applicant has at least one proposed instructor who has been approved by the Commission as an update course instructor under Section .0200 of this Subchapter;
- (3) The applicant satisfies any of the requirements of Section .0400 of this Subchapter relating to qualifications or eligibility of course sponsors; and
- (4) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter are possessed of such good reputation and character as is appropriate for persons who will be providing education to real estate licensees. In this regard, the Commission may consider the reputation and character of any owner, officer or director of any corporation, association or organization applying for sponsor approval.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0105 STUDENT FEE FOR UPDATE COURSES

Sponsors of an update course may establish the amount of the fee to be charged to students taking this course; provided, however, that the established fee must be a single, all-inclusive fee and no separate or additional fee of any type may be charged to students.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0200 - UPDATE COURSE INSTRUCTORS

.0201 PURPOSE AND APPLICABILITY

This Section prescribes the criteria and procedures for a prospective instructor of a Commission-developed update course to obtain and maintain approval to teach such course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0202 NATURE AND SCOPE OF APPROVAL

Approval of update course instructors shall be accomplished on a calendar year basis separate from the approval of update course sponsors. Approval of an update course instructor authorizes the instructor to teach the update course for any approved update course sponsor; however, an approved update course instructor may not independently conduct an update course unless the instructor has also obtained approval as an update course sponsor. An instructor must obtain written approval from the Commission prior to teaching an update course and prior to representing to any sponsor or other party that he is approved or may be approved as an update course instructor.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form prescribed by the Commission. Beginning in 1995, such applications must be submitted prior to April 1 or after June 30 of any calendar year. Applications for original approval will not be accepted between April 1 and June 30 of any calendar year after 1994. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's

qualifications must be submitted.

(b) The applicant must possess such good reputation and character as is appropriate for persons who will be teaching the update course to real estate licensees.

(c) The applicant must be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of real estate.
- (2) Possession of a current North Carolina real estate broker license, three years active full-time experience in real estate brokerage within the previous ten years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.
- (3) Possession of a current North Carolina real estate broker license and experience teaching at least ten real estate prelicensing courses within the previous five years.
- (4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years, with a substantial emphasis on real estate practice.
- (5) Possession of qualifications found by the Commission to be equivalent to one or more of the above standards.

(d) The applicant must possess good teaching skills as demonstrated on a videotape portraying the instructor teaching a real estate topic to a live audience. The applicant must submit for Commission review a videotape in a format prescribed by the Commission. The videotape must be 45-60 minutes in length and must depict a continuous block of instruction on a single topic that is covered in one of the Commission's prelicensing course syllabi. The videotape must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The videotape must have been made within the previous three years. The videotape must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he possesses a current North Carolina real estate broker license and either a current designation as

a Designated Real Estate Instructor (DREI) granted by the Real Estate Educators Association or some other equivalent designation or certification.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0204 RENEWAL OF APPROVAL

Commission approval of update course instructors expires on the next December 31 following issuance of approval, except that approval of instructors approved prior to January 1, 1995 shall expire on December 31, 1995. In order to assure continuous approval, applications for renewal of approval must be filed on a form prescribed by the Commission on or before December 1 immediately preceding expiration of their approval. Applicants must satisfy the criteria for original approval, with the exception of the requirement stated in Rule .0203(d) of this Section, in order to renew their approval.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0205 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Commission may deny or withdraw approval of any update course instructor upon finding that:

- (1) The instructor has made any false statements or presented any false information in connection with an application for approval or renewal of approval;
- (2) The instructor has failed to meet the criteria for approval described in Rule .0203 of this Section or has refused or failed to comply with any other provisions of this Subchapter;
- (3) The instructor has failed to demonstrate, during the teaching of update courses, those effective teaching skills described in Rule .0509 of this Subchapter; or
- (4) The instructor has provided false or incorrect information in connection with any reports a course sponsor is required to submit to the Commission.

(b) If a licensee who is an approved update course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0206 REQUEST FOR VIDEOTAPE

Upon the written request of the Commission, an approved update course instructor must submit to the Commission, a videotape depicting the instructor teaching the update course. The videotape must have been made within 12 months of the date of submission and must conform to technical instructions prescribed by the Commission.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0300 - ELECTIVE COURSES

.0301 PURPOSE AND APPLICABILITY

This Section describes the elective course component of the continuing education requirement for real estate licensees and prescribes the criteria and procedures for the approval of continuing education elective courses, sponsors and instructors.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0302 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesman must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.

(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided that no courses may be conducted between June 11 and June 30 of any approval period.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0303 APPLICATION FOR ORIGINAL APPROVAL

An entity seeking original approval of a proposed elective course must make application on a form prescribed by the Commission. Beginning in 1995, such applications must be submitted prior to April 1 or after June 30 of any calendar year. Applications for original approval will not be accepted between April 1 and June 30 of any calendar year after 1994. The applicant must

submit a nonrefundable fee of one hundred dollars (\$100.00) per course in the form of a certified check, bank check or money order payable to the North Carolina Real Estate Commission; provided, however, that no fee is required if the entity making application is a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools. The application shall be accompanied by a copy of the instructor's guide or manual for the course and a copy of materials that will be provided to students. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

The following requirements must be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant must submit all information required by the Commission and pay the application fee, if applicable.
- (2) The applicant must satisfy any of the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course must satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course must be current and accurate.
- (4) The course must involve a minimum of two classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter are possessed of such good reputation and character as is appropriate for persons who will be providing education to real estate licensees. In this regard, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval.
- (6) The course must be one involving a qualified instructor who will be physically present in the classroom at all times

and who will personally provide the instruction. The use of indirect instruction such as videotape, remote television or similar types of instruction may be employed on a limited basis to enhance or supplement personal instruction. Persons featured in any such indirect presentation of information may not be considered the official course instructor. No portion of the course may consist of correspondence instruction.

- (7) The course plan or instructor's guide must provide for the use of instructional methods and instructional aids that are appropriate in view of the subject matter and learning objectives for the course. Examples of instructional methods and instructional aids that may be appropriate include, but are not limited to, class discussion, role-playing, in-class work assignments, overhead transparencies and videotape.
- (8) The course must include handout materials for students covering the subject matter of the course unless the applicant can demonstrate that such materials are either inappropriate or unnecessary for the course.
- (9) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306 of this Section.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0305 ELECTIVE COURSE SUBJECT MATTER

Elective courses must cover a real estate topic and must directly contribute to accomplishment of the primary purpose of mandatory continuing education, which is to help assure that real estate licensees possess the knowledge, skills and competence necessary to function in the real estate business in a manner that protects and serves the public interest. The knowledge or skills taught in an elective course must enable licensees to better serve real estate consumers and the subject matter must be directly related to real estate practice. Examples of acceptable subject matter include, but are not limited to: Real property law; agency law; real estate contracts; land use controls; environmental protection laws; real estate economics and markets; real estate finance, investment or appraisal; property management; real estate construction or development; commercial real estate brokerage; taxation of real estate investments; the Real Estate

License Law and Commission rules; and other similar topics. Examples of subject matter that is not acceptable include, but are not limited to: Real estate sales training; real estate brokerage management; business administration or management; general office and computer skills; success training; motivational training; personal development; time management; and other similar topics.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0306 ELECTIVE COURSE INSTRUCTORS

(a) The instructor of an elective course must possess such good reputation and character as is appropriate for persons who will be teaching continuing education to real estate licensees and must be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree in a field directly related to the subject matter of the course;
- (2) Three years' full-time work experience within the previous ten years that is directly related to the subject matter of the course;
- (3) Three years' full-time experience within the previous ten years teaching the subject matter of the course; or
- (4) Education and/or experience found by the Commission to be equivalent to one or more of the above standards.

(b) If the subject matter of the course deals directly with real estate brokerage practices, then the instructor must also possess a current real estate license.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0307 ELECTIVE COURSE CREDIT HOURS

The elective course approval issued to a course sponsor will include the number of hours of continuing education credit that will be awarded for the course. The maximum number of credit hours that will be awarded for an elective course is four hours.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0308 REQUEST FOR VIDEOTAPE

Upon the written request of the Commission, the sponsor of an approved elective course must submit to the Commission a videotape depicting the course being taught by a particular instructor designated by the Commission. The videotape must have been made within 12 months of the date

of submission and must conform to technical instructions prescribed by the Commission.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0309 STUDENT FEES FOR ELECTIVE COURSES

A sponsor of an elective course may establish the amount of the fee(s) to be charged to students taking the course; provided, however, that the total amount of any fees to be charged must be included in any advertising or promotional materials for the course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 - GENERAL SPONSOR REQUIREMENTS

.0401 PURPOSE AND APPLICABILITY

This Section contains miscellaneous general provisions relating to the approval of sponsors to conduct either the update course or elective courses and to the responsibilities of approved sponsors. Matters addressed include: Sponsor names and eligibility; designation of a continuing education coordinator; renewal of course and sponsor approval; records and reports; grounds for denial or withdrawal of approval, and other related matters.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0402 SPONSOR ELIGIBILITY

(a) Any legal entity is eligible to seek approval as a sponsor of continuing education courses, provided that any person seeking such approval must be at least 21 years of age and provided further that an entity seeking approval of a continuing education elective course must be eligible under Paragraph (b) of this Rule.

(b) An entity seeking approval of a course as a continuing education elective course must either be the owner of the proprietary rights to the course or lawfully have acquired from the course owner the right to seek course approval from the Commission and to conduct such course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0403 SPONSOR NAME

(a) The official name to be used by any course sponsor in connection with the offering of an approved continuing education course must clearly distinguish the sponsor from any other previously approved continuing education course sponsor.

Unless the sponsor is a licensed private real estate school proposing to operate continuing education courses in its own name, the official name also must clearly distinguish the sponsor from any licensed private real estate school. Sponsor applicants proposing to use a sponsor name which does not comply with this standard may be required to adopt a different name as a condition of approval.

(b) Any advertisement or promotional material utilized by an approved course sponsor must include the course sponsor's official name and shall not include any other name for the sponsor.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0404 ADVANCE APPROVAL REQUIRED

Prospective sponsors of an update course or elective course must obtain written approval from the Commission to conduct such course prior to conducting the course and prior to advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct an update course will be granted for any reason. Retroactive approval of an elective course may be granted by the Commission if the course sponsor can provide evidence satisfactory to the Commission that the course was not offered for purposes of satisfying the real estate continuing education requirement and that the sponsor could not reasonably have been expected to anticipate in advance that students would want to receive continuing education elective credit for the course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0405 CONTINUING EDUCATION COORDINATOR

A sponsor of an update course or elective course must designate one person to serve as the continuing education coordinator for all Commission-approved continuing education courses offered by the sponsor. The designated coordinator shall serve as the official contact person for the sponsor and shall be responsible for the following:

- (1) Supervising the conduct of all the sponsor's Commission-approved continuing education courses;
- (2) Signing the course completion certificates provided by the sponsor to licensees completing courses; and
- (3) Submitting to the Commission all required fees, rosters, reports and other information.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0406 COURSE ROSTERS, COMPLETION CERTIFICATES AND EVALUATIONS

(a) Course sponsors and instructors must complete or have students complete, as appropriate, a roster of all real estate licensees enrolled in an approved continuing education course and a course completion card for each licensee successfully completing the course, and sponsors must submit these documents to the Commission within five business days following the course. These documents shall be completed on forms and in accordance with instructions prescribed by the Commission.

(b) Course sponsors and instructors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course. The evaluation shall be completed on a form and in accordance with instructions prescribed by the Commission. Sponsors must submit the completed evaluation forms to the Commission within five business days following the course.

(c) Course sponsors and instructors shall, within five business days following the course, provide each licensee who satisfactorily completes an approved continuing education course a course completion certificate on a form and in accordance with instructions prescribed by the Commission. The certificate is to be retained by the licensee as his proof of having completed the course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0407 PER STUDENT FEE

Within five business days following completion of any approved continuing education update or elective course, the sponsor must submit to the Commission, along with the roster, course completion cards and evaluation forms required to be submitted by Rule .0406 of this Section, a fee in the amount of five dollars (\$5.00) for each licensee successfully completing the course. This fee shall be paid by check payable to the North Carolina Real Estate Commission. A separate check is required for each separate class session.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0408 CHANGE IN SPONSOR OWNERSHIP

The approval granted to a course sponsor may be transferred to a new or different legal entity only with the advance approval of the Commission. In the event the ownership of an entity approved as a

course sponsor is to be sold or otherwise changed, the approved sponsor must request Commission approval of the ownership change. The Commission will then advise the sponsor if the change is acceptable or if the proposed new sponsor must apply for original approval. If the ownership change will result in no additional person being added as owner, officer or director, then the approval granted to the sponsor may be transferred to the new legal entity. However, if any additional person is to be added as owner, officer or director, then the approval granted to the sponsor may not be transferred.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0409 CHANGES DURING APPROVAL PERIOD

(a) Course sponsors must notify the Commission in writing prior to any change in business name, continuing education coordinator, address or business telephone number.

(b) Course sponsors must obtain advance approval from the Commission for any changes to be made in the content or number of hours for elective courses; provided that changes in course content which are solely for the purpose of assuring that information provided in a course is current and accurate do not require approval during the approval period, but shall be reported at the time the sponsor requests renewal of course approval. Requests for approval of changes shall be in writing.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0410 COURSE RECORDS

All course sponsors must retain on file for two years records of student registration and attendance for each session of a continuing education course that is conducted and must make such records available to the Commission upon request.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0411 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Commission approval of continuing education courses and sponsors expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of Commission approval, accompanied by the prescribed renewal fee, must be filed on a form prescribed by the Commission annually on or before March 31. Any incomplete application for

renewal of continuing education course and sponsor approval received on or before March 31 which is not completed within 10 days of notice of the deficiency, as well as any renewal application received after March 31, shall not be accepted and the sponsor will have to file an application for original approval on or after July 1 in order to be reapproved. Applicants for renewal of approval must satisfy the criteria for original approval in order to renew their approval.

(b) The fee for renewal of Commission approval shall be fifty dollars (\$50.00) for each update course sponsor and for each elective course, provided that no fee is required for course sponsors that are exempted from original application fees. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0412 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Commission may deny or withdraw approval of any course or course sponsor upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of such approval;
- (2) the course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Subchapter;
- (3) the course sponsor or any official or instructor in the employ of the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Commission;
- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (5) the course sponsor has provided to the Commission in payment for required fees a check which was dishonored by a bank;
- (6) an instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0509 of this Subchapter; or

(7) any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0500 - COURSE OPERATIONAL REQUIREMENTS

.0501 PURPOSE AND APPLICABILITY

This Section prescribes various operational requirements for both approved elective courses and update courses. Sponsors are fully responsible for assuring compliance with these course operational requirements as well as continued compliance with the criteria for original approval of courses and sponsors.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0502 SCHEDULING

Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day, including appropriate breaks for each class session. The maximum permissible class session without a break is 90 minutes. Courses scheduled for more than four hours in any given day must include a meal break of at least one hour.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0503 MINIMUM CLASS SIZE

The minimum class size for any session of an approved continuing education course shall be five

students.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0504 NOTICE OF SCHEDULED COURSES

(a) Sponsors must provide the Commission written notice of all scheduled course offerings not later than 10 days prior to a scheduled course date. The notice shall include the name and assigned number for the sponsor and, for each scheduled course, the name and assigned number for the course, the scheduled date and time, specific location, and name of the instructor.

(b) Sponsors must notify the Commission of any schedule changes or course cancellations at least five days prior to the original scheduled course date. If a last minute change or cancellation is necessary due to some unforeseen circumstance, then notice should be provided to the Commission as soon as possible.

(c) Sponsors must notify the Commission as soon as possible when it becomes apparent that enrollment in a planned class session will exceed 100 students.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0505 ADVERTISING; PROVIDING COURSE INFORMATION

(a) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Commission for an approved elective course is less than the number of scheduled hours for the course, any course advertisement or promotional materials which indicate that the course is approved for real estate continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Commission for the course.

(b) Any flyers, brochures or similar materials utilized to promote a continuing education course must clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies.

(c) Course sponsors of any elective course must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0506 CLASSES OPEN TO ALL LICENSEES

All approved continuing education courses must be open to all licensees on a first-come/first-served

basis. Real estate licensees, companies, franchisees, company-owned schools or trade organizations approved by the Commission as course sponsors must afford all licensees an equal opportunity to enroll in each session of an approved course. Courses may not be promoted or conducted in such a manner as would effectively exclude licensees who are not affiliated in some manner with the sponsor.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0507 CLASSROOM FACILITIES

Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must:

- (1) be of sufficient size to accommodate comfortably all enrolled students;
- (2) be adequately equipped with student desks, worktables with chairs or other seating having a writing surface;
- (3) have adequate light, heat, cooling, ventilation, and public address equipment; and
- (4) be free of distractions that would disrupt class sessions.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0508 STUDENT CHECK-IN

Upon initially checking in for a class session, sponsors and instructors shall require each licensee to provide their license number and shall provide each student with a copy of the continuing education student information sheet provided to sponsors by the Commission.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0509 INSTRUCTOR CONDUCT AND PERFORMANCE

(a) Instructors must assure that class sessions are commenced in a timely manner and are conducted for the full amount of time that is scheduled. Instructors must also assure that each update course is taught according to the instructor guide provided by the Commission and that each elective course is taught according to the course plan and instructor guide that was approved by the Commission, including the furnishing to students of appropriate student materials.

(b) Instructors must conduct themselves in a professional and courteous manner when performing their instructional duties and must conduct classes in a manner that demonstrates a mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate voice inflection, grammar and vocabulary.
- (2) The ability to present an effective visual image to a class, including appropriate appearance and physical mannerisms.
- (3) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students.
- (4) The ability to effectively utilize varied instructional techniques in addition to straight lecture, such as class discussion, role playing or other techniques.
- (5) The ability to effectively utilize instructional aids, such as the overhead projector, to enhance learning.
- (6) The ability to maintain an appropriate learning environment and effective control of a class.
- (7) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0510 MONITORING ATTENDANCE

(a) Sponsors and instructors must strictly monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course have attended at least 90 percent of the scheduled classroom hours. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. Students shall not be allowed to sign a course completion card, shall not be issued a course completion certificate, and shall not be reported to the Commission as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors may not make any exceptions to the attendance requirement for any reason. Sponsors and instructors shall also comply fully with any additional instructions for monitoring attendance provided by the Commission.

(b) Sponsors must assure that adequate person-

nel, in addition to the instructor, are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0511 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, instructors shall require that students comply with the following student participation standards:

- (1) A student shall direct his active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) A student shall refrain from engaging in any activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.
- (3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.

(b) Instructors have the authority to dismiss from a class session any student who, after having received one warning, fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule. In the alternative, the instructor or sponsor may report the problem to the Commission when providing required reports to the Commission regarding the class session during which the problem occurred.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0512 SOLICITATION OF STUDENTS

Sponsors and instructors may make available for purchase by continuing education students materials that belong to the sponsor, instructor, or some other party; however, class time may not be used to promote or sell any materials or to solicit affiliation or membership in any business or organization.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0513 CANCELLATION AND REFUND POLICIES

Course sponsors must administer course cancellation and fee refund policies in a non-discriminatory

manner. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

**.0514 COURSE INSPECTIONS BY
COMMISSION REPRESENTATIVE**

Course sponsors shall admit the Commission's authorized representative to monitor any continuing education class without prior notice. Such representatives shall not be required to register or pay any fee and shall not be reported as having completed the course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation	= Title, Chapter, Subchapter and Rule(s)
AD	= Adopt
AM	= Amend
RP	= Repeal
With Chgs	= Final text differs from proposed text
Corr	= Typographical errors or changes that requires no rulemaking
Eff. Date	= Date rule becomes effective
Temp. Expires	= Rule was filed as a temporary rule and expires on this date or 180 days

NORTH CAROLINA ADMINISTRATIVE CODE

JANUARY 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	21	Occupational Licensing Boards
10	Human Resources	19 - Electrolysis	
11	Insurance	26 - Landscape Architects	
13	Labor	36 - Nursing	
15A	Environment, Health, and Natural Resources	38 - Occupational Therapy	
19A	Transportation	60 - Refrigeration Examiners	
		65 - Therapeutic Recreation Certification	
		Administrative Hearings	
		26	

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC 35 .0303			✓			02/01/94	
10	NCAC 3C .0201		✓		✓		02/01/94	
	.2101	✓			✓		02/01/94	
	.2102 - .2103	✓					02/01/94	
	.2104 - .2105	✓			✓		02/01/94	
3D	.1301 - .1302		✓		✓		02/01/94	
3R	.0214					✓		
	.0304					✓		
	.1218					✓		
	.1413					✓		
	.1415					✓		
	.1419					✓		

LIST OF RULES CODIFIED

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC 3R .1613 - .1617		✓		✓		02/01/94	
	.1618		✓				02/01/94	
	.1619	✓					02/01/94	
	.1713 - .1715					✓		
	.1718					✓		
	.1912					✓		
	.2115					✓		
	.2314	✓					02/01/94	
	.2315	✓			✓		02/01/94	
	.2316	✓					02/01/94	
	.2317 - .2318	✓			✓		02/01/94	
	.2319 - .2320	✓					02/01/94	
	.2713	✓					02/01/94	
	.2714	✓			✓		02/01/94	
	.2715	✓					02/01/94	
	.2716 - .2718	✓			✓		02/01/94	
	.2719	✓					02/01/94	
	.3050					✓		
	.3102 - .3103					✓		
	.3201 - .3202					✓		
	.3205					✓		
	.3301	✓					02/01/94	
	.3302 - .3303	✓			✓		02/01/94	
	.3304	✓					02/01/94	
	.3305	✓			✓		02/01/94	
	.3306	✓					02/01/94	
	.3401					✓		
	.3505					✓		
	.3601 - .3602					✓		
	.3701 - .3703					✓		
	.3801					✓		
	.3803 - .3805					✓		
	.3902 - .3903					✓		

LIST OF RULES CODIFIED

Citation			AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3R .6001 - .6004	✓					03/01/94	
		22T .0202 - .0203	✓					02/01/94	
		22U .0102	✓					02/01/94	
		.0201	✓			✓		02/01/94	
		.0202	✓					02/01/94	
		.0203	✓			✓		02/01/94	
		.0204 - .0205	✓					02/01/94	
		22V .0101	✓					02/01/94	
		.0201 - .0202	✓			✓		02/01/94	
		.0203	✓					02/01/94	
		35D .0303		✓				03/01/94	
		35E .0104 - .0106		✓				03/01/94	
		.0306		✓		✓		03/01/94	
		.0308		✓		✓		03/01/94	
		.0322	✓					03/01/94	
		35F .0101 - .0103			✓			03/01/94	
		.0106 - .0108			✓			03/01/94	
		.0201	✓					03/01/94	
		.0301 - .0305	✓					03/01/94	
		.0306	✓			✓		03/01/94	
		.0307 - .0308	✓					03/01/94	
		42A .0308 - .0310			✓			03/01/94	
		.0601 - .0603	✓					03/01/94	
		.0604 - .0605	✓			✓		03/01/94	
		.0606 - .0608	✓					03/01/94	
		42J .0003		✓				03/01/94	
		42Q .0014		✓				03/01/94	
		42R .0204		✓				03/01/94	
		46G .0214		✓		✓		02/01/94	
		46H .0104		✓		✓		02/01/94	
		47B .0404		✓				07/01/94	
11	NCAC	6A .0802		✓		✓		02/01/94	
		10 .1208	✓			✓		02/01/94	

LIST OF RULES CODIFIED

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
11	NCAC	12	.1304	✓			02/01/94	
			.1306 - .1307	✓			02/01/94	
		16	.0205	✓		✓	02/01/94	
13	NCAC	7F	.0101	✓		✓	02/01/94	
15A	NCAC	IJ	.0102	✓			03/08/94	180 DAYS
			.0201	✓			03/08/94	180 DAYS
			.0303 - .0304	✓			03/08/94	180 DAYS
			.0402	✓			03/08/94	180 DAYS
			.0501		✓		03/08/94	180 DAYS
			.0502 - .0503	✓			03/08/94	180 DAYS
			.0505	✓			03/08/94	180 DAYS
			.0602 - .0603	✓			03/08/94	180 DAYS
			.0605		✓		03/08/94	180 DAYS
			.0606	✓			03/08/94	180 DAYS
			.0701 - .0703	✓			03/08/94	180 DAYS
			.0802 - .0803	✓			03/08/94	180 DAYS
			.0901	✓			03/08/94	180 DAYS
			.0904	✓			03/08/94	180 DAYS
			.0905		✓		03/08/94	180 DAYS
			.1002	✓			03/08/94	180 DAYS
			.1101	✓			03/08/94	180 DAYS
1L			.0101 - .0102	✓			03/08/94	180 DAYS
			.0201 - .0203	✓			03/08/94	180 DAYS
			.0301 - .0303	✓			03/08/94	180 DAYS
			.0401	✓			03/08/94	180 DAYS
			.0501 - .0504	✓			03/08/94	180 DAYS
			.0601 - .0605	✓			03/08/94	180 DAYS
			.0701 - .0703	✓			03/08/94	180 DAYS
			.0801	✓			03/08/94	180 DAYS
			.0901 - .0902	✓			03/08/94	180 DAYS
			.1001 - .1004	✓			03/08/94	180 DAYS
			.1101 - .1102	✓			03/08/94	180 DAYS
			.1201 - .1202	✓			03/08/94	180 DAYS

LIST OF RULES CODIFIED

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC 2D .0101		✓				03/08/94	180 DAYS
	.0501		✓				03/08/94	180 DAYS
	.0503		✓				03/08/94	180 DAYS
	.0524 - .0525		✓				03/08/94	180 DAYS
	.0530 - .0533		✓				03/08/94	180 DAYS
	.0601		✓				03/08/94	180 DAYS
	.0801 - .0804		✓				03/08/94	180 DAYS
	.0805 - .0806	✓					03/08/94	180 DAYS
	.1109	✓					03/08/94	180 DAYS
2H	.0223		✓		✓		02/01/94	
	.0601 - .0607			✓			03/08/94	180 DAYS
	.0805					✓		
2Q	.0101 - .0111	✓					03/08/94	180 DAYS
	.0201 - .0207	✓					03/08/94	180 DAYS
	.0301 - .0311	✓					03/08/94	180 DAYS
	.0401 - .0418	✓					03/08/94	180 DAYS
	.0501 - .0524	✓					03/08/94	180 DAYS
	.0601 - .0606	✓					03/08/94	180 DAYS
10B	.0119		✓		✓		02/01/94	
	.0123	✓					02/01/94	
10E	.0004		✓				02/01/94	
10F	.0330		✓				02/01/94	
	.0360		✓				02/01/94	
10H	.0806		✓				02/01/94	
	.0813	✓					02/01/94	
10I	.0002 - .0003		✓				02/01/94	
19H	.0702		✓		✓		02/01/94	
	.0903		✓				02/01/94	
19A	NCAC 2D .0601 - .0602					✓		
	.0607					✓		
	.0816					✓		
	.0818					✓		
	.0825					✓		

LIST OF RULES CODIFIED

Citation		AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC 2D .0828					✓		
	3I .0501					✓		
21	NCAC 19 .0202		✓		✓		02/01/94	
	.0622	✓					02/01/94	
26	.0204 - .0205			✓			02/01/94	
	.0206 - .0207		✓				02/01/94	
	.0208			✓			02/01/94	
36	.0203		✓				02/01/94	
	.0211		✓				02/01/94	
	.0213		✓				02/01/94	
	.0218		✓				02/01/94	
	.0221		✓				02/01/94	
38	.0102		✓				02/01/94	
	.0204		✓				02/01/94	
	.0306 - .0307			✓			02/01/94	
	.0613		✓				02/01/94	
	.0701 - .0703	✓			✓		02/01/94	
	.0704 - .0706	✓					02/01/94	
60	.0211	✓			✓		02/01/94	
65	.0004	✓			✓		02/01/94	
26	NCAC 1 .0103		✓				02/01/94	
3	.0101		✓				02/01/94	
	.0105		✓				02/01/94	
	.0107		✓		✓		02/01/94	
	.0108		✓				02/01/94	
	.0112		✓				02/01/94	
	.0126		✓				02/01/94	
	.0201	✓			✓		02/01/94	
	.0202 - .0206	✓					02/01/94	
	.0207	✓			✓		02/01/94	
	.0208	✓					02/01/94	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

COMMERCE

Banking Commission

4 NCAC 3F .0202 - Permissible Investments

RRC Objection 12/16/93

Agency Responded

Obj. Cont'd 01/20/94

Agency Revised Rule

Obj. Removed 02/17/94

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Soil and Water Conservation Commission

15A NCAC 6F .0004 - Approved Best Management Practices (BMPs)

RRC Objection 01/20/94

15A NCAC 6F .0005 - Technical Specialist Designation Procedure

RRC Objection 01/20/94

HUMAN RESOURCES

Aging

10 NCAC 22T .0101 - Scope of Health Screening Services

RRC Objection 01/20/94

10 NCAC 22T .0201 - Provision of Health Screening Services

RRC Objection 01/20/94

10 NCAC 22U .0101 - Scope of Senior Companion

RRC Objection 01/20/94

10 NCAC 22W .0101 - Scope of Home Care Services

RRC Objection 02/17/94

LICENSING BOARDS AND COMMISSIONS

Landscape Architects

21 NCAC 26 .0209 - Unprofessional Conduct

RRC Objection 01/20/94

21 NCAC 26 .0210 - Dishonest Practice

RRC Objection 01/20/94

21 NCAC 26 .0211 - Incompetence

RRC Objection 01/20/94

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .0512 - Policy Making/Confidential Exempt Priority Consideration *RRC Objection 02/17/94*

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

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Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
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